

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF WASHINGTON

STATE OF OREGON,)
)
Plaintiff,) Washington County
) Circuit Court
v.) No. 16CR46339
)
BENJAMIN JAY BARBER,) CA A163786
)
Defendant.) **Volume 4 of 5**

TRANSCRIPT OF PROCEEDINGS ON APPEAL

BE IT REMEMBERED that the above-entitled
Court and cause came on regularly for hearing before
the Honorable Beth L. Roberts, on Thursday, the 10th
day of November, 2016, at the Washington County
Courthouse, Courtroom No. 304C, Hillsboro, Oregon.

APPEARANCES

Marie Atwood, Deputy District Attorney,
Appearing on behalf of the State;

Cameron Taylor and Christine Helregel,
Attorneys at Law,
Appearing on behalf of Defendant Barber.

KATIE BRADFORD, CSR 90-0148
Court Reporter
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Proceedings recorded by digital audio recording;
transcript provided by Certified Shorthand Reporter.

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1 (Volume 4, Thursday, November 10, 2016, 9:01 a.m.)

2 P R O C E E D I N G S

3 (Whereupon, the following proceedings
4 were held in open court, out of the presence of
5 the jury:)

6 THE COURT: Good morning. Please be
7 seated.

8 Okay. We're here on the State of Oregon
9 versus Benjamin Jay Barber, beginning Day 2 of our
10 jury trial. Ms. Atwood is here on behalf of the
11 State. And --

12 MS. ATWOOD: Those are the definitions I
13 set out (indiscernible).

14 THE COURT: Mr. Taylor and Ms. --

15 MR. TAYLOR: Helregel.

16 THE COURT: -- Helregel --

17 MS. HELREGEL: Helregel.

18 THE COURT: -- are present with the
19 defendant. And are we ready to proceed?

20 MS. ATWOOD: I believe so, Your Honor.

21 MR. TAYLOR: Yes, Judge.

22 THE COURT: All right. Let's go ahead
23 and bring our jury back in.

24 (The following proceedings were held in
25 open court, the jury being present, 9:03 a.m.)

1 THE COURT: Good morning. Welcome back.
2 We're ready to begin.

3 Ms. Atwood, you may call your next
4 witness.

5 MS. ATWOOD: Thank you, Your Honor.
6 We'll call Robert Rookhuyzen.

7 THE CLERK: If I can have you remain
8 standing. Raise your right hand.

9 **ROBERT ROOKHUYZEN**

10 Was thereupon called as a witness on behalf of the
11 State; and, having been first duly sworn, was examined
12 and testified as follows:

13 THE CLERK: Thank you.

14 THE WITNESS: Okay.

15 THE CLERK: You may be seated.

16 For the record, if I could have you
17 please state your name, spelling the first and last.

18 THE WITNESS: Sure. My name is Robert
19 Rookhuyzen; R-o-b-e-r-t, R-o-o-k-h-u-y-z-e-n.

20 THE COURT: Okay. Ms. Atwood, you
21 may inquire.

22 MS. ATWOOD: Thank you, Judge.

23 **DIRECT EXAMINATION**

24 BY MS. ATWOOD:

25 Q Good morning.

1 A Good morning.

2 Q Where do you work?

3 A I work for the Washington County

4 Sheriff's Office.

5 Q And how long have you worked there?

6 A I just hit my 15-year mark in September.

7 Q What do you do at the Sheriff's Office?

8 A So I'm currently a violent crimes

9 detective. I -- I investigate mostly robberies,

10 homicides, adult sex crimes. And I'm part of the

11 Washington County Major Crimes Team. And as part of

12 that, I respond to all homicides in the county as

13 well as officer-involved shootings.

14 Q Before you were a detective, were you

15 a deputy?

16 A Yes.

17 Q What is the difference in your duties

18 between what you did before and what you do now?

19 A So I like to tell people that it's kind of

20 like when somebody goes into a hospital. There's the

21 triage person that kind of sees why you're there and

22 then they decide if you're going to stay or you're

23 going to go. And then they refer you on kind of this

24 more specialized care.

25 So a patrol deputy, they respond to any

1 kind of 9-1-1 call. They're kind of generalists, if
2 you will.

3 So any kind of call that comes up, they
4 have to be prepared to go to that. And then if
5 something requires more followup that's going to be
6 lengthy or require a lot of time, then it goes on to
7 detectives.

8 Q Okay. So did you go through the basic
9 training and police academy to become a deputy --

10 A Yes.

11 Q -- when you started working? And what kind
12 of additional training did you have to do to become
13 a detective?

14 A So it's a competitive process to become a
15 detective. So, basically, you just have to show your
16 proficiency on the road. So I was promoted. After
17 seven years as a deputy, I was promoted to corporal
18 and then I did that for a few years and then I was
19 promoted again through a competitive process to be a
20 detective.

21 So some of the specialized training I did
22 in my first five years, I was assigned to child abuse
23 investigations, so I handled mostly sex crimes
24 against children. And so as part of that, I went to
25 international and local trainings and basically a lot

1 of on-the-job experience through lots of cases.

2 Q Okay. So during your time working as a
3 child abuse detective and the -- and the cases you do
4 now, do you have experience and training in dealing
5 with computer or internet-related crimes?

6 A Yes.

7 Q What kind of crimes are those?

8 A Oh, what kind of crimes and --

9 Q What -- what kind of crimes have you
10 worked on?

11 A So a lot of crimes now involve -- you know,
12 have a computer-related component, whether it's a
13 suspect's computer, a victim's computer, tablet
14 device, cell phones, Facebook, social media, there's
15 a lot of different crimes now. Anything from sex
16 crimes to homicides, we -- we rely on digital
17 evidence.

18 Q So would you say that that comes up or has
19 come up pretty frequently in your experience?

20 A Yes.

21 Q So do you have experience in seizing and
22 searching digital or technology-related items?

23 A Yes, mostly seizing. I'm not a digital
24 forensics examiner. We have specialists who do that
25 for us. That requires a lot more training and that's

1 not really anything that I'm super interested in.
2 But, yeah, as far as obtaining it and, you know,
3 writing search warrants for it and giving it to the
4 experts, I do that.

5 Q Okay. I'd like to draw your attention to
6 the investigation in this case. How did you become
7 involved with this case?

8 A So back on August 25th of this year, I was
9 assigned to basically do followup on a case that
10 had -- that had come in through Deputy Duenas.

11 Q And what was the nature of the followup you
12 were suppose to do?

13 A I was suppose to see what kind of digital
14 footprint there was as far as, you know, whether
15 videos were still on certain pornographic websites,
16 whether we could preserve those for evidence and
17 basically find out information through search
18 warrants as to when an account was created, when the
19 videos were posted and/or deleted, that kind of
20 stuff.

21 Q Okay. And you mentioned before that what
22 you would typically do is try to seize an item from
23 someone to obtain information about things like
24 digital footprint; is that right?

25 A Correct. And -- and this case was a little

1 bit different because we were getting information
2 from a third party, these individual websites.

3 Q Why were you unable to seize anything as
4 far as physical evidence is concerned?

5 A So my understanding at the time I got
6 involved was that Mr. Barber was transient and we
7 didn't know, you know, where he was or where a
8 computer would be located.

9 Q So was the nature of your investigation
10 suppose to be you investigating things online?

11 A Yes.

12 Q Okay. Where did you start?

13 A So I -- I started with a few different
14 websites. Should I -- should I go through the
15 websites?

16 Q Well, let me ask you a couple of questions
17 before we get there. Were you able to review
18 anything before you began your own individual
19 investigation?

20 A Yes. I reviewed all the reports that
21 Deputy Duenas had written and there was also some
22 information provided by Ms. Vance, specifically
23 websites where she had, you know, encountered these
24 videos still being active online.

25 Q Okay. So how -- is -- is that where you

1 began your search then?

2 A Yes.

3 Q Did you follow the list of websites that
4 were provided by her?

5 A Yes.

6 Q And -- and any additional information
7 provided by Deputy Duenas?

8 A Yes.

9 Q Okay. So why don't we just go through your
10 investigation piece by piece? What was the first
11 thing that you did?

12 A So what we just talked about, basically, I
13 went down the list item by item and went through the
14 different websites and basically went to every active
15 link where she had seen, you know, a video involving
16 her and Mr. Barber.

17 Q And how were you planning on preserving
18 what you found on the website?

19 A So there's an add-on to the browser I use
20 and basically you can direct it to save any
21 multimedia content that you see on a website. So
22 it's basically something anyone can do.

23 Q Okay. What was the first website that you
24 went to?

25 A So the first website I went to was

1 Pornhub.com.

2 Q And was that one of the sites that was
3 listed on the materials provided by Ms. Vance?

4 A Yes.

5 Q Okay. What did you observe when you went
6 to Pornhub.com?

7 A So I first looked at, like, terms and
8 conditions for users. I saw on their terms and
9 conditions page that made clear that no user could
10 use the website to break any laws.

11 I found information -- basically a -- a web
12 form that someone can fill out if there was a video
13 on their site that they didn't want on there or that
14 had been put up there without consent. So,
15 basically, it's a way -- a mechanism to have a video
16 removed.

17 I found out who their attorney was and I
18 found out that they were headquartered in Cyprus.
19 Not Cypress, California, but Cyprus, the country.
20 And then I went to a profile called BarberB, which I
21 had been told and got information it belonged to the
22 defendant. And I saw that that profile was still
23 active.

24 And then I took screenshots of all the
25 things I just talked about and -- and placed that

1 into evidence.

2 And then when I clicked on that specific
3 profile, the BarberB profile, it showed that two
4 videos were still active online. And both were --
5 both had been labeled "Albino Porn."

6 And one was 16 minutes and one second in
7 length and the other one was 18 minutes and 46
8 seconds in length. And I saw that each of them
9 had -- I should say, they had several thousand views.

10 Q Do you recall or did you record anywhere
11 how many views you saw were listed at that time?

12 A Yes. On -- and -- and I just -- just for
13 clarification, this is back on August 30th of this
14 year. One of the videos on that website had 2,464
15 views and the other one had 1,771 views.

16 Q So before we move to the next site you
17 looked at, I want to ask you a couple of follow-up
18 questions. You mentioned that you had looked for
19 where they were headquartered and where their, I
20 guess, legal process would be directed. Why did you
21 look for those things?

22 A So I knew early on that we were -- you
23 know, one of the goals of the investigation was to
24 obtain information from these websites. And I know
25 that all these websites would require some kind of

1 legal process, like a subpoena or a search warrant.

2 Q And when you observed the two videos that
3 were still active, did you try to download those?

4 A Yes. I was able to preserve those through
5 the browser add-on and I placed a copy into evidence.

6 Q Okay. And was that evidence on a disk?

7 A Yes.

8 Q What -- when you observed the videos, what
9 did you see as far as the content was concerned?

10 A So both videos depicted consensual sex
11 between Mr. Barber and Ms. Vance. It appeared to be
12 taking place in a bedroom. And in one of the videos,
13 Ms. Vance appeared to be tied up.

14 Q What was the next website that you went to?

15 A So the next website I went to was called
16 RedTube.com. And I guess I want to mention, too, the
17 first website being called Pornhub, it actually is
18 kind of a -- a -- I guess, a main website, if you
19 will, and several others are subsidiaries. So
20 RedTube and a couple more that we're going to talk
21 about are subsidiaries of Pornhub.

22 Q And is that something that would be typical
23 for you to see in the investigations you've done?

24 A No. I -- I don't -- I don't know that it
25 would be.

1 Q Okay. So RedTube was -- how -- how did
2 you -- how could you tell that it was a subsidiary or
3 an associate website of Pornhub.com.

4 A So it is part -- it's -- it's clear, like,
5 in the terms and conditions and legal page that
6 you're dealing with Pornhub as the main entity and
7 this is a subsidiary. For example, RedTube handles
8 the -- any support questions or the legal issues that
9 I mentioned before. It refers you back to Pornhub.

10 Q And was the -- did you visit a part of the
11 website to find that information on -- on RedTube or
12 was that information you had already learned from
13 Pornhub?

14 A No, it's -- it's on both.

15 Q Okay. So what did you find when you went
16 to RedTube.com?

17 A So I found out that there was a profile
18 called BarberV -- BarberB, sorry, that contained
19 active videos. It showed -- basically, the profile
20 for BarberB showed to be a male -- a 31-year-old male
21 named Benjamin, a male with an interest in men and it
22 showed him to be in Newberg, Oregon. And it showed
23 the last log on to be five months earlier.

24 Q And that specific identifying information,
25 was that different than what you had seen on Pornhub?

1 A Yes, it was.

2 Q What did you see on RedTube as far as
3 videos that had been uploaded?

4 A So -- and like I said, it -- it showed four
5 active videos and they were all labeled "Albino
6 Porn." And they were -- it showed that all these
7 videos had been added or uploaded to the website on
8 April 6th of this year.

9 And so there were four of them. One was 21
10 minutes and 25 seconds in length. One was 16 minutes
11 and 1 second in length. Another one was 18 minutes
12 and 46 seconds in length. Another one was 21 minutes
13 in length. And, again, these had hundreds of views
14 each.

15 Q Were any of the videos that you observed on
16 RedTube.com the same videos that you had seen on
17 Pornhub?

18 A Yes. So Pornhub had two active videos and
19 RedTube had four. Two of the four were the same.

20 Q As far -- and -- and the other two were
21 different videos?

22 A Correct.

23 Q They weren't duplicates?

24 A Correct.

25 Q And as far as the views were concerned,

1 were there the same or different number of views on
2 RedTube versus Pornhub?

3 A Completely different.

4 Q How many views did you find on the videos
5 on RedTube.com.

6 A So on RedTube, one of them had 586 views,
7 one had 487 views, one had 1,009 views and another
8 one had 506 views.

9 Q And were you able to download these videos
10 to preserve them as well?

11 A Yes.

12 Q And what was the content of the other
13 videos that weren't redundant from the previous
14 website?

15 A So the videos appeared to depict consensual
16 oral and vaginal sex in a bedroom setting.

17 Q What was the next website you went to?

18 A So the next website I went to was called
19 Porn.com.

20 Q Did you, again, look for any sign of legal
21 services information or a place to send a contact to?

22 A I did. And -- and this particular website
23 didn't have any kind of contact information.

24 Q Did it appear to be another subsidiary or
25 affiliate of Pornhub or RedTube?

1 A I don't believe so.

2 Q And when you went to Pornhub.com, you
3 mentioned there was -- on the page itself, the -- the
4 different subsidiaries were listed. Was Porn.com one
5 of those?

6 A I don't believe so.

7 Q What did you observe when you went to
8 Porn.com?

9 A So I looked on this website, again, for
10 profile information belonging to BarberB. And it
11 showed that that profile -- you know, the -- the
12 person behind the profile had joined five months
13 earlier, so back in March of '16, at the time I was
14 looking at it.

15 Q And this was the same user name as was on
16 the previous two websites?

17 A Yes.

18 Q What did you observe when you went to that
19 user name's profile?

20 A So what it showed was -- it showed that
21 there were four videos on that profile, but when I
22 clicked on the link to see those videos, I saw a
23 message that indicated that no videos had been
24 uploaded yet, so kind of contradictory.

25 Q And was that significant to you? What did

1 you take that to mean?

2 A Well, I -- I took that to mean that there
3 had been videos there, but then they'd -- they'd been
4 removed for some reason.

5 Q Okay. Did you record or preserve any
6 information from Porn.com?

7 A What I did, since the videos weren't active
8 anymore, is I did screenshots that showed, you know,
9 basically what I just testified to, that there were
10 four there and then when I clicked on them, that it
11 showed that they weren't -- or that they'd been
12 removed.

13 Q Okay.

14 A Or, I'm sorry, that no video had been
15 uploaded yet.

16 Q Just bear with me for a second. What was
17 the next website that you went to?

18 A So the next website I went to was called
19 TNAFlix.com.

20 Q And did you notice whether or not that
21 website appeared to be an affiliate or a subsidiary
22 of any others?

23 A Yeah, it appeared to be independent.

24 Q What did you notice as far as their
25 location or legal services were concerned?

1 A There was no legal or law enforcement
2 contact information. And they had a basic -- a basic
3 web form just for general support or questions.

4 Q Okay. And what did you observe when you
5 went to TNAFlix.com as far as these videos were
6 concerned?

7 A So I -- I found two active videos there.
8 Both were labeled "Albino Porn," which is -- which
9 had been the same at all the other websites. One was
10 16 minutes and 1 second in length and had 61 views.
11 And the other one was 21 minutes 25 seconds in length
12 and had been viewed 90 times.

13 Q Did you notice whether or not, on
14 TNAFlix.com, there was a user name associated with
15 those videos?

16 A Yes. It was -- it was basically under the
17 BarberB profile, also.

18 Q Were you able to download these videos to
19 preserve them as well?

20 A Yes.

21 Q What was the next website that you went to?

22 A The next website I went to was called
23 EMPFLix.com.

24 Q And did that website appear to be
25 affiliated with any others?

1 A Yes. It appeared to be part of the
2 previous website, the TNAflix.

3 Q How could you tell?

4 A I think it -- I think it says so.

5 Q Okay. Did you find any legal contact
6 information on that website?

7 A No.

8 Q What did you --

9 A They just -- oh, I'm sorry. They just have
10 a general support/contact web form.

11 Q Okay. What did you find as far as any
12 videos or information relating to this case?

13 A So I showed -- so, basically, again, the
14 reason I was here was Ms. Vance had provided links to
15 where she had seen videos in the past. So what I got
16 here was that none of those links were still active.
17 So I got a message that said the movie requested was
18 not found.

19 Q And when you searched for them, did you
20 take the verbatim length that was provided on
21 Ms. Vance's list? You didn't just type into a search
22 bar or something like that?

23 A Correct. I was going to the exact
24 web location.

25 Q Okay. Were you able to preserve

1 information about -- well, I guess, any information
2 that you had found on this website?

3 A So what I did, again, when there were no
4 links that were active that went anywhere, I just
5 took screenshots of the message, basically, that said
6 the video was not available.

7 Q What was the next website you visited?

8 A So the next website I went to was called
9 Thumbzilla.com.

10 Q Is Thumbzilla an affiliate of any others?

11 A Yes. Thumbzilla is also run by
12 Pornhub.com.

13 Q What did you find as far as contact or
14 legal information?

15 A So there was not any separate contact
16 e-mail address -- excuse me -- or separate legal law
17 enforcement contact information. I later learned
18 that Pornhub handles those requests when they get
19 subpoenas and search warrants.

20 Q Up to this point, did you notice whether
21 any of these websites describe how a person can
22 upload a video?

23 A Yeah, each one's a little bit different.
24 In fact, Thumbzilla does not require an account, so
25 basically, you could upload anonymously. The other

1 ones that we've talked about, you're basically --
2 create a -- a user account and then you can upload
3 and kind of have this profile and people can follow
4 you or be notified if -- if you upload something new.

5 Q But Thumbzilla was just -- you could upload
6 without being registered in any way?

7 A Right. Think of kind of like -- well, I
8 guess that you can't even use YouTube as an example.
9 Yeah, it's -- it's more anonymous.

10 Q Okay. How many links did you look at
11 on Thumbzilla?

12 A On Thumbzilla, so it looks like I got 14,
13 but one of them was redundant, so I think 13 total.

14 Q And I just want to go one by one through
15 the links that you looked at. What did you find as
16 far as the first link was concerned?

17 A Okay. So the first link I went to, I got
18 an error message that the page wasn't found.

19 Q And I -- I guess just by way of background,
20 did you look through -- or did you search for these
21 in the same order that they were listed on
22 Ms. Vance's paperwork she provided?

23 A Yes.

24 Q Okay. So the first link took you to a -- a
25 page that said the page was not found?

1 A Correct.

2 Q Okay. What about the second link?

3 A The second one I went to, I found a video
4 tat was 16 minutes and 1 second in length. It had
5 been viewed 2,550 times. And again, these are
6 back -- this is back on September 2nd that I was
7 looking at this.

8 Q What about the third link? Well, let me
9 back up. The video that you found on the second
10 link, was that -- what was the content of that video?

11 A It shows consensual vaginal sex. And I
12 recognized it as being one of the same videos that we
13 talked about, so based on the people involved --
14 there's a bed frame, there's some background art in
15 the room. I recognized all that stuff.

16 Q Did you download a copy of that video?

17 A Yes.

18 Q Were you able to place that into evidence
19 along with the others?

20 A Yes.

21 Q Okay. So what about the third link that
22 you followed?

23 A So the next link I went to, I got a message
24 that said the video had been deleted by its uploader.

25 Q So there wasn't any thumbnail or any record

1 of what the video was -- that it looked like?

2 A Correct.

3 Q Okay. What about the fourth link?

4 A So the next link I went to, I got a message
5 that said that the video had been deleted by
6 its uploader.

7 Q And the next link?

8 A The next one I went to, I got an error
9 message that said the video could not be found.

10 Q And were you capturing the -- the
11 information you were finding, even on the links that
12 had been removed, in any way? How were your
13 capturing it?

14 A Yes. So the -- so the links that weren't
15 active, I'm just doing the screenshot of the screen
16 and then putting that into evidence as well. Just --
17 it shows the link that I went to. Of course, I can
18 attest to the date and time and then showing the
19 result that I got.

20 Q And what about the -- I think we're on the
21 sixth link?

22 A So the next one I went to was an active
23 link. It was a video. It was 18 minutes and 45
24 seconds in length. It had been viewed 1,833 times as
25 of September 2nd.

1 And, again, I recognized the people and the
2 background as being the same from the other videos.
3 And this video showed vaginal sex.

4 Q Did you download that video to preserve it?

5 A Yes.

6 Q Okay. What did you find on the next link
7 you followed?

8 A So the next link I went to, I got an error
9 message that said the page could not be found.

10 Q Did you screenshot that message?

11 A Yes.

12 Q And what about the eighth link?

13 A The next one, I got a message that the
14 video had been deleted by its uploader.

15 Q And the ninth link?

16 A The next one, I got a message that the
17 video had been deleted by its uploader.

18 Q And as far as those two links are
19 concerned, you captured screenshots of those as well?

20 A Yes.

21 Q And what about the tenth link?

22 A I got an error message that the page could
23 not be found.

24 Q And the 11th?

25 A I got a message that the video had been

1 deleted by its uploader.

2 Q And the 12th?

3 A I got a message that the video had been
4 deleted by its uploader.

5 Q And, finally, the 13th?

6 A I got an error message that the page could
7 not be found.

8 Q You were able to capture all of these as
9 part of your investigation?

10 A Yeah, again, screenshots.

11 Q Okay. What else did you do as your
12 investigation continued in this case?

13 A So as you move forward with this, you know,
14 I -- I'd learned which videos were active and
15 whatnot. So at that point, I prepared a search
16 warrant affidavit and prepared search warrants for
17 three different websites: The Pornhub.com,
18 RedTube.com and Thumbzilla.com.

19 Q And why did you select those websites?

20 A So those were websites that had active
21 content and where I knew how to contact the website.

22 Q Okay. So the one -- the websites that you
23 had visited that didn't have any legal contact
24 information provided, where would you -- what would
25 you have done with a search warrant in that

1 situation?

2 A There's -- yeah, you -- there's no where to
3 go, really.

4 Q Did you initially attempt to contact the
5 websites via any other means?

6 A Yes. I had sent e-mails -- like I said,
7 Pornhub -- maybe I didn't say this, but Pornhub had
8 their attorney's information online also, so you
9 could send an e-mail.

10 Q Were your e-mails -- was there any response
11 to the e-mails that you had sent?

12 A They were -- they were slow to respond at
13 some -- sometimes. Sometimes they were really fast
14 to respond, but, yeah, they responded.

15 Q And just so that I'm clear, the -- was the
16 only physical contact information location
17 information that you knew on about these websites,
18 the address in Cyprus?

19 A Correct.

20 Q Was that usual or unusual to you in
21 any way?

22 A Well, some -- sometimes corporations have
23 their headquarters in foreign countries so they don't
24 necessarily have to comply with -- with our subpoenas
25 or search warrants. So it didn't super surprise me.

1 Q And in your experience as a detective,
2 particularly involving child abuse-type cases, have
3 you investigated cases dealing with child
4 pornography?

5 A Yes.

6 Q Do you have a difficult time executing
7 search warrants on websites like that?

8 A Absolutely.

9 Q What kind of information did you request in
10 your search warrants?

11 A So I'm just going to refer to that real
12 quick.

13 Q Sure.

14 A So on -- I'll start with Pornhub. What I
15 was looking for there was I wanted them to search the
16 BarberB user account. I wanted them to search the
17 two active videos there and the ten videos that had
18 been there.

19 And what I was looking for was any and all
20 user profile information for Pornhub user BarberB,
21 including the date and time he -- he became a user,
22 any associated e-mail addresses, any associated
23 physical mailing address.

24 I was looking for the date and time the two
25 active videos had been posted and I asked for the

1 date, the time and the circumstances the other ten
2 videos were removed or deleted.

3 And then I was looking for any and all
4 evidence of the crime of Unlawful Dissemination of
5 the Intimate Image.

6 Q And that was just in regards to
7 Pornhub.com?

8 A Correct.

9 Q What about RedTube?

10 A So for RedTube, very similar. I wanted
11 them to search the BarberB user account. I was
12 looking for any and all user profile information for
13 the user name BarberB, including the date and time he
14 became a user, any associated e-mail addresses, any
15 associated physical or mailing addresses.

16 And then for the four active videos there,
17 I wanted to know the date and time the videos were
18 posted. And then also mI was looking for any and all
19 evidence related to the crime of Unlawful
20 Dissemination of an Intimate Image with Ms. Vance as
21 a victim.

22 Q And what about the third website,
23 Thumbzilla?

24 A So for Thumbzilla, because there's not a
25 user account, I basically went through each of the --

1 the links, both the dead links and the active links,
2 where there was still web content.

3 And I asked for the date and time those
4 were posted and I asked for the IP address, the
5 internet protocol address, of the user who uploaded
6 and, where appropriate, removed the videos. And --

7 Q What is an IP address? If you can
8 just describe.

9 A So an IP address is assigned to a user,
10 like, if they're using a computer or a cell phone or
11 whatever is, to get onto the internet. And those
12 are -- those are tracked and assigned.

13 Q Are they tracked by location? How does
14 it work?

15 A Well, so an IP address, when we learn a
16 bit, we can narrow it down and say, hey, this IP
17 address belongs to Comcast in Oregon or it belongs to
18 CableOne in Virginia.

19 So it helps us narrow it down and then
20 we're able to subpoena or, by search warrant, get the
21 actual subscriber who belongs to that IP address.

22 Q And why did you want to get IP addresses
23 for just Thumbzilla?

24 A So Thumbzilla, again, you don't have to
25 have any kind of account. It's more anonymous, if

1 you will. Anyone can upload and there's less
2 tracking. On the other websites that we've talked
3 about, you had to be a user.

4 So you had to go in and create an account.
5 You had a password. It's -- it's -- yeah. I -- or I
6 felt like I already knew who we were dealing with on
7 those, especially when the last name matched the
8 person that I was -- you know, learned was the
9 suspect in this particular case.

10 Q So I -- I think I may have cut you off
11 while you were describing the information you were
12 looking for from Thumbzilla. You -- you asked to IP
13 addresses and what else?

14 A So I was looking for the dates and the
15 times that the particular videos were uploaded and,
16 where appropriate, where they had been removed -- or
17 when they had been removed, sorry.

18 Q And when you applied for these search
19 warrants, were they signed off on by a judge?

20 A Yes.

21 Q When you executed the search warrants, how
22 successful was any response that came back to you?

23 A So I would have to say the response was
24 pretty minimal.

25 Q What do you mean by that?

1 A I asked for -- you know, we just talked
2 about Thumbzilla, for example. I asked for all the
3 IP addresses and they didn't provide that. They
4 provided, you know, information about when videos had
5 gone up, when some of them had been deleted. They
6 provided, you know, when the user accounts were made,
7 but all in all, it was not 100-percent responsive.

8 Q Is that surprising at all to you?

9 A It's unusual.

10 Q Why?

11 A Usually, when we provide a -- a business
12 with a search warrant, they provide the information
13 that's in there.

14 Q At what point, I guess, as -- as far as the
15 timeline is concerned, did you get the search
16 warrants executed and how long was it before you
17 received any information back about them?

18 A So I -- I -- let me check my notes. So the
19 warrants were signed by Judge Upton on October 11th.
20 And I hadn't heard anything back by Halloween, so I
21 started e-mailing, following up and then I started
22 getting some e-mail responses.

23 Q So based on your experience as a deputy and
24 a corporal and now a detective and your independent
25 investigation into this case, did you believe a crime

1 had been committed?

2 A Yes.

3 Q What crime was that?

4 A It's a new statute called Unlawful
5 Dissemination of an Intimate Image.

6 Q And what was the basis for your belief that
7 that crime had been committed?

8 A My belief was that these videos were posted
9 after a breakup, from what I -- you know, from what I
10 read in police reports, a very nasty breakup, a very
11 long and protracted nasty breakup. And they were
12 posted after that, essentially.

13 Q Okay.

14 A In an attempt to humiliate -- humiliate and
15 embarrass Ms. Vance.

16 Q And who did you understand to be the
17 perpetrator of that offense?

18 A Benjamin Barber.

19 Q Did you ever have any personal contact with
20 him or with the victim in the case?

21 A No.

22 Q Okay. Was the extent of your job to try
23 to, as you described it, get the full picture of the
24 internet footprint?

25 A That's correct.

1 MS. ATWOOD: Okay. I believe those are
2 all my questions for now. Thank you.

3 THE WITNESS: Thank you.

4 THE COURT: Mr. Taylor.

5 MR. TAYLOR: Ms. Helregel, actually.

6 THE COURT: Okay. Ms. Helregel.

7 CROSS-EXAMINATION

8 BY MS. HELREGEL:

9 Q All right. So, Detective Rookhuyzen, you
10 attended the police academy for 2002 for basic
11 training?

12 A Yes.

13 Q And then in 2011 for detective training?

14 A Yes.

15 Q And you took some classes there -- you took
16 some classes there?

17 A Yes.

18 Q But you didn't take one in computer
19 forensics, you said?

20 A I'm not certified computer forensics, just
21 I've -- I've had training in that and I know what it
22 is.

23 Q Okay. So are you familiar with what a
24 mirror is?

25 A In the usual context or in the computer

1 context?

2 Q In the computer context.

3 A Yes.

4 Q All right. So can you kind of describe
5 what you -- what your impression of what a mirror is
6 in the computer context?

7 A Sure. My -- my limited understanding of
8 that is, if you have a website that is heavily
9 trafficked, they'll have a mirror website. Say,
10 there's one in the United States. There's one in
11 Germany. There's one in Chile.

12 And basically based on where you are, it'll
13 direct traffic to those to take pressure, if you
14 will, off -- off the main server. The content will
15 be the same. The user won't even know a difference.
16 But my understanding is that it'll, you know, direct
17 traffic to relieve pressure on the main site.

18 Q So those websites, they would duplicate
19 content --

20 A Yes.

21 Q -- from each other? Would that be the same
22 as a subsidiary?

23 A Well, I -- I guess I wasn't being clear.
24 My understanding would be that the content would be
25 shared, not necessarily stored and duplicated, but --

1 but shared. Does that make sense?

2 Q And they would have different URL websites?

3 A Yes.

4 Q Okay. And so you noticed in this case that
5 some of these websites were subsidiaries or mirrors
6 of each other?

7 A Yes, ma'am.

8 Q And so that would have been Pornhub and
9 RedTube and Thumbzilla?

10 A Correct.

11 Q And then it sounded like EMPFlix and
12 TNAFlix?

13 A Yeah. Those two are also related to
14 one another.

15 Q And those are the ones that you confirmed
16 were mirrored?

17 A As far as relationships?

18 Q Yes.

19 A Yeah, I think that's fair to say.

20 Q But you're uncertain as to the rest of
21 them? They could have been mirrors of each other?

22 A Correct.

23 Q Okay. And so what that means is that
24 someone could post one website and then it gets
25 copied to all these other websites?

1 A Yes, potentially.

2 Q Without that person who originally posted
3 it even knowing?

4 A No. My understanding from the ones that
5 we've talked about is that separate accounts were
6 created.

7 Q Right. We'll talk about that in just
8 a minute.

9 A Okay.

10 Q And what about IP tracing? So you talked
11 about that a little bit. Have you -- you've done
12 those before?

13 A Yes.

14 Q And so you know how to complete an IP
15 trace?

16 A Yes. We subpoena or search warrant request
17 the information from a provider.

18 Q Okay. So I want to talk and move on to
19 what you did in this case.

20 A Okay.

21 Q So the district attorney asked you to look
22 into these websites where videos were allegedly
23 posted?

24 A Yes.

25 Q And you read Deputy Duenas' reports to

1 do that?

2 A Correct.

3 Q And you took notes on everything you did?

4 A Yes.

5 Q And, Detective Rookhuyzen, so you're
6 familiar with the internet?

7 A Yes.

8 Q And you're familiar with creating user
9 names?

10 A Yes.

11 Q You're familiar with how easy it is to
12 create a user name?

13 A Yes.

14 Q How anyone can create a user name
15 like BarberB?

16 A Yes.

17 Q I could have created it?

18 A Yes.

19 Q You could have created it?

20 A Yes.

21 Q Ms. Vance could have created it?

22 A Yes.

23 Q And there's a way to find out who,
24 specifically, created an account?

25 A There's ways to narrow it down. So just --

1 just to be clear and fair, I have one IP address at
2 my house related to my cable internet, but anyone at
3 my house using any device is going to show that same
4 IP address.

5 Q Okay. So there's a way to figure out which
6 household created (indiscernible)?

7 A Yeah, or -- or a business. So, you know,
8 the -- the Starbucks across the street is going to
9 have one that hundreds of people can use.

10 Q And so that would require getting a
11 search warrant?

12 A Yes.

13 Q Checking the IP address?

14 A Yes.

15 Q And seeing if it matched the person that
16 you suspect created the account?

17 A Correct.

18 Q And you didn't do that in this case?

19 A I did do that in this case.

20 Q But you weren't able to figure it out in
21 this case?

22 A It wasn't provided by the website.

23 Q So you weren't able to definitively figure
24 out who created these accounts?

25 A Correct.

1 Q All right. And so, Detective, you're also
2 familiar with pornographic websites?

3 A Yes.

4 Q As part of your job?

5 A Yes. Thank you --

6 Q And you talked --

7 A -- thank you for clarifying.

8 Q And we talked about how they -- they can
9 mirror content as well?

10 A Yes.

11 Q And so these websites are just -- they're
12 kind of a mass?

13 A They're kind of what?

14 Q They're kind of a mass. They're all
15 connected to each other?

16 A Not all of them, but some of them are
17 connected to one another.

18 Q But a lot of them. And it's hard to figure
19 out exactly which ones?

20 A Sure. Some of them make that really clear
21 and some, you're right, they don't.

22 Q Okay. So no one necessarily had to post to
23 each of these sites?

24 A My understanding is that -- is that they
25 were separate accounts created on these different

1 websites.

2 Q But no one had to have necessarily post it
3 to each of these sites, though?

4 A My understanding is that if it was a true
5 mirror, then we would be seeing the same number of
6 views per video. So -- so I -- I think -- I think
7 that's responsive to your question.

8 Q Okay. And so this is also just the nature
9 of these websites. Someone could download the
10 pornography and then re-upload it to another site?

11 A Absolutely.

12 Q And that wouldn't necessarily be the
13 original poster?

14 A So I think that would be fair to say for
15 Thumbzilla, which doesn't require specific user
16 accounts and logins. But for the other ones, I
17 would -- I would disagree with that.

18 Q But again, someone could have created
19 these accounts --

20 A Someone definitely created --

21 Q -- with the exact same name?

22 A Someone definitely created these accounts.

23 Q Someone else, though. Me?

24 A No, it -- it could be the same person.

25 Q It could be anyone, though?

1 A It could be the same person, too.

2 Q But it could be anyone else?

3 A And it could be the same person.

4 Q And, again, we're not 100-percent certain
5 of who exactly created those accounts?

6 A That's fair to say.

7 Q Okay. Give me a second to just check
8 my notes.

9 A Sure.

10 Q All right. So I want to move on and start
11 talking about each of the sites in detail.

12 A Okay.

13 Q All right. So the first one I want to talk
14 about is PornTube. You didn't check this website?

15 A Just to be clear, you said PornTube?

16 Q PornTube.

17 A Correct. I don't see it on the list where
18 she had seen -- where Ms. Vance had previously seen
19 videos.

20 Q Okay. But this was in Officer --
21 Deputy Duenas' report --

22 A Okay.

23 Q -- as being one of the websites.

24 A So let me just check it. And you -- you
25 said PornTube, correct?

1 Q PornTube --

2 A Okay.

3 Q -- yes.

4 THE COURT: My apologies. T-w-o or
5 t-u-b-e?

6 MS. HELREGEL: T-u-b-e.

7 THE COURT: Thank you.

8 THE WITNESS: That's correct.

9 BY MS. HELREGEL:

10 Q All right. So you didn't go on this
11 website?

12 A Correct.

13 Q Didn't look for an account?

14 A Correct. I don't see that in my notes.

15 Q And didn't try to see if there were any --
16 any of these videos on PornTube?

17 A Correct. I don't see that in my notes.

18 Q All right. So EverySexTube, same thing.

19 This was in Officer Duenas' report.

20 A In Deputy Duenas' report?

21 Q Yes.

22 A No. I don't have that in my notes or
23 report at all.

24 Q So it looks like it would have been in his
25 June 25th report, EverySexTube.com.

1 A Is that the first -- yeah, very first one.

2 Q Very first report.

3 A Okay. Correct. And -- and just to be
4 clear, there's no direct links or, you know, account
5 information.

6 Q Okay. But you didn't go on that website
7 and look for any accounts?

8 A No.

9 Q Any account that was named BarberB?

10 A No.

11 Q And you didn't check on this website for
12 any of these videos?

13 A Not sure how I'd do that, but, no.

14 Q Through -- potentially, through the tags
15 that had been provided, "Albino Porn,"
16 (indiscernible).

17 A Got you. No, I did not.

18 Q Okay. So I want to go -- move on to
19 xHamster then. This was also in Deputy Duenas'
20 report.

21 A Okay.

22 Q And this was the website that Ms. Vance
23 reported first seeing the pornography on.

24 A Okay.

25 Q And you didn't check this website?

1 A No. The information in his report that the
2 videos were removed.

3 Q All right. So you didn't e-mail -- try and
4 e-mail their staff to figure out anything about those
5 videos, though?

6 A That's correct.

7 Q See who had posted them?

8 A Correct.

9 Q When they had been posted?

10 A Correct.

11 Q And you didn't look to see if those links
12 were associated with a specific profile?

13 A Well, first of all, I didn't have links,
14 so, no.

15 Q All right. But in the case of other
16 websites where there had been deleted videos, you did
17 attempt to contact those websites?

18 A Yes. Where there were specific links that
19 had been provided, I was able to narrow it down to a
20 website and, obviously, go after the legal contact
21 information.

22 Q So you just didn't look for any of the
23 videos on xHamster?

24 A Correct.

25 Q Okay. All right. So let's move on to the

1 sites you did check.

2 A Okay.

3 Q First one is Porn.com. So you didn't find
4 any videos on Porn.com?

5 A Correct. No active videos.

6 Q Okay. And you saw that there was an
7 account that was created five months ago?

8 A That's correct.

9 Q But you have no idea when the last login
10 was for that account?

11 A Correct.

12 Q All right. And when you checked that
13 profile, there were no videos there?

14 A On Porn.com?

15 Q Yes.

16 A So it was kind of weird. So like I
17 testified, there were four videos. When you click on
18 the profile, it shows that that person has four
19 videos. But then when you click on the videos link,
20 it says that he hasn't uploaded any videos yet.

21 Q Okay. So you have no idea whether there
22 were even ever four videos?

23 A I have good reason to believe there were
24 four videos.

25 Q But you have no idea what those four

1 videos were?

2 A That's fair to say.

3 Q All right. And so, again, kind of going
4 back to the subsidiary and everything, you don't know
5 whether Porn.com was a mirror website of someone
6 else?

7 A I think that's fair to say, also.

8 Q All right. And you didn't e-mail Porn.com?

9 A There was no legal law enforcement contact
10 information.

11 Q Did they have any contact information
12 posted on their website?

13 A Not that I saw, not even a general support.

14 Q All right. So you weren't able to give --
15 to serve them a warrant?

16 A Correct.

17 Q Look for them?

18 A Correct.

19 Q So really no evidence that there was
20 anything posted on Porn.com?

21 A That's fair to say. There were four videos
22 at some point, but not at the time I was doing my
23 research.

24 Q And no way to figure out what those four
25 videos were?

1 A Correct.

2 Q All right. So how about for EMPFlix? You
3 went on there, but you didn't see a -- did you check
4 for an account?

5 A So this appears to be another one where you
6 don't need an account.

7 Q Okay. So you couldn't find an account
8 called BarberB on EMPFlix?

9 A Correct. And I was looking by exact links
10 and they don't appear to be in any -- in any, like,
11 profile folder. There appear to just be random
12 numbers get assigned to uploads.

13 Q All right. So you have no way of knowing
14 what -- who posted these videos?

15 A Well, there were -- there were no active
16 videos when I was doing my research.

17 Q Okay. And so none of these links worked?

18 A Correct.

19 Q So, again, no videos on EMPFlix either?

20 A Correct.

21 Q No way of knowing what those videos that
22 may have -- may have been there previously even were?

23 A That's right.

24 Q All right. And you didn't get a warrant
25 for EMPFlix?

1 A No.

2 Q You tried to contact them, but you got an
3 error message?

4 A Correct.

5 Q And you couldn't go anywhere beyond that?

6 A Correct.

7 Q All right. So TNAflix is the next one.
8 You saw two videos on there?

9 A Yes.

10 Q But can't confirm whether or not those were
11 mirrored or -- or subsidiaries from another site?

12 A It appears to be an independent website.

13 Q Appears to be, but not 100 percent certain?

14 A Correct.

15 Q All right. And so you also didn't check to
16 see who had created this BarberB account?

17 A I'm sorry, say that again.

18 Q You didn't check to find out who created
19 the BarberB account? No IP address (indiscernible).

20 A It's -- it's -- it's kind of a dead end.
21 There's -- again, there's no legal or law enforcement
22 contact information --

23 Q Okay. And you don't know --

24 A So -- so I would say I went absolutely as
25 far as I could go.

1 Q Okay. And so you don't know when this
2 account was created either?

3 A Correct.

4 Q All right. And you contacted them, but it
5 looks like you never heard back from TNAFlix?

6 A I didn't see any law enforcement or contact
7 information on my -- on the first go around. Let me
8 look one more place.

9 Okay. It looks like a few days later, I
10 did find a contact portal for them. I sent a
11 response asking when BarberB joined the account and
12 when the two videos were posted. And I don't think I
13 ever heard back. I think you said that.

14 Q Okay.

15 A Yeah.

16 Q So you never heard back from them?

17 A That's correct.

18 Q And you didn't follow up with them?

19 A You can't force someone to respond, so --
20 but, no, I didn't hear back.

21 Q Okay. And you never got a search warrant
22 for TNAFlix?

23 A Correct. All I had was the e-mail address.

24 Q All right. So Thumbzilla is the next one.

25 A Okay.

1 Q And you said there was no account here
2 either?

3 A Correct. Yeah. This website is basically
4 people log on and upload stuff, but you don't have to
5 have an account.

6 Q So there's no way of knowing who posted
7 those videos?

8 A Like -- like we talked about, you can
9 narrow it down by IP address, which they did not
10 provide.

11 Q Okay. So you don't know who posted
12 those videos?

13 A That's fair to say.

14 Q And there was no account associated with
15 them, obviously?

16 A Right.

17 Q All right. And this was another website
18 that was a subsidiary of Pornhub?

19 A That's correct.

20 Q Okay. So you didn't double check whether
21 the (indiscernible) in this case was mirrored from
22 Pornhub or published independently?

23 A Well, some of the videos, again, were the
24 same length and the same content. So whether they
25 were uploaded independently or mirrored, you know --

1 again, my -- my best belief -- my strongest belief
2 here, would be that we would see a duplicate number
3 of views, everything, but -- but they're different
4 from site to site.

5 Q But you're not certain of that?

6 A It -- it makes sense to me, but you're
7 right. I -- I can't say with certainty.

8 Q Because if someone went and viewed the
9 video on Thumbzilla, that wouldn't necessarily mean
10 the views would go up on, say, RedTube or Pornhub?

11 A It -- it would seem that they were mirrors
12 in sharing content from one main source.

13 Q But you don't know that?

14 A That's -- that's correct.

15 Q All right. And so in this case, you got a
16 search warrant for Thumbzilla, but they didn't get
17 you the IP addresses, you said?

18 A Correct.

19 Q All right. And so kind of -- let's move on
20 to RedTube next.

21 A Okay.

22 Q Again, operated -- a subsidiary of Pornhub?

23 A Right.

24 Q Kind of the same deal, not 100 percent sure
25 whether this content was mirrored from Pornhub or

1 not?

2 A I think that's fair to say.

3 Q All right. And in this case, you saw that
4 the BarberB last logon was five months prior to when
5 you checked?

6 A Yes.

7 Q And -- but the videos were uploaded in
8 April, which was four months prior?

9 A Yes.

10 Q So the videos were uploaded after the
11 last logon?

12 A That's what that appears to show.

13 Q So it seemed like they were automatically
14 uploaded?

15 A I don't know.

16 Q The person wasn't logged in when they were
17 uploaded, it looks like?

18 A No, I don't -- I don't think that part's
19 possible. But I think it's also kind of approximate.
20 So when was the user last seen and it gives an
21 estimate. It doesn't give an exact date. It gives
22 an estimate.

23 Q But it appears as though the videos were
24 uploaded four months prior.

25 A Yeah. So I was -- I guess I should point

1 out, so on -- it was August 31st of this year that I
2 was looking at these.

3 And it kind of showed for that profile, the
4 last logon was five months earlier. But, yeah. It
5 shows the videos added on a specific date, which was
6 April 6th of '16.

7 I think it's also a good potential that
8 someone could remain logged in. So unless they
9 physically or manually log out, that it shows them
10 continuously logged in, if that makes sense.

11 Q But there's no way of knowing that in
12 this case?

13 A Correct.

14 Q Okay. All right. So the last one is
15 Pornhub.

16 A Okay.

17 Q And you got a warrant for Pornhub?

18 A Okay.

19 Q But you didn't figure out whether the
20 account -- who had created the account?

21 A I think -- so give me just one second to
22 answer that. So your question is, did I find out if
23 I heard back who created that account?

24 Q Yeah.

25 A Okay. So I learned that the user BarberB

1 was related to an e-mail address,
2 starworks5@gmail.com, and the account was created on
3 March 31st of 2014.

4 Q Okay. But you didn't use the warrant to
5 find out the IP address or who posted any of the
6 videos?

7 A Correct.

8 Q And you didn't ask for the IP address of
9 the person who created the account?

10 A No.

11 Q Okay. So these warrants --

12 A And -- and I guess I'll just -- is it okay
13 to expand on -- expand on that real quick?

14 Q Let's move on to the next question.

15 A Okay.

16 Q So you got three warrants in this case?

17 A Yes.

18 Q But there were nine websites that these
19 videos were supposedly posted to?

20 A So, obviously, I had Deputy Duenas' report,
21 but I wasn't looking at nine websites. I looked at
22 one, two, three, four, five, six, I think.

23 Q Okay. So we started out with nine
24 websites. You only looked at six of them?

25 A Yes.

1 Q And you only got search warrants for three
2 of those?

3 A Correct.

4 Q All right.

5 A The ones with active content.

6 Q Okay. And so just to really make this
7 clear, you never actually confirmed whether -- who
8 created the BarberB account?

9 A I'll need you to be more specific.

10 Q You were never actually able to pinpoint
11 exactly who created the BarberB account in these
12 cases?

13 A I'll need you to be more specific.
14 Which website?

15 Q For any of them.

16 A No, that's not true. So Pornhub responded
17 that the person who created their accounts on Pornhub
18 was related to the e-mail address
19 starworks5@gmail.com.

20 Q But you were never able to get a first and
21 a last name for the person who created the account?

22 A From the website?

23 Q Yeah.

24 A I don't think it's required.

25 Q Or an IP address?

1 A No, they would not provide the IP address.

2 Q Okay. All right. So I just have a few
3 more questions for you. So you didn't talk to
4 Mr. Barber in this case?

5 A No. By the time of my involvement, he was
6 represented.

7 Q Okay. And you didn't talk to Ms. Vance
8 about this case?

9 A Nope.

10 Q Didn't try to clear up some of the websites
11 through her? Get some more links for the ones you
12 didn't check?

13 A No, I -- I had what was provided.

14 Q Okay. And you never got a search warrant
15 for Mr. Barber's laptop?

16 A I just want to make it real clear that in
17 order to get a search warrant, we had to be really
18 specific as to the information that we're looking for
19 and we have to know where something's located.

20 So, again, my understanding when I got
21 involved at the end of August was that he was
22 transient and I had no idea where he would have been,
23 where a computer device would have been located,
24 whether it was a computer or a tablet or -- or
25 something else. So I found myself lacking on the

1 specificity requirement.

2 Q Okay. Detective Rookhuyzen, are you aware
3 that Mr. Barber's address was provided to the Court
4 and the district attorney numerous times throughout
5 this case?

6 A I -- I'm certain of that. That's -- that's
7 usually the requirement. But what that means is if
8 someone has a computer on January 1st, I can't assume
9 they have it on January 17th.

10 So, again, it's -- it's not fresh
11 information. I had no details anywhere of whether it
12 was a computer, whether it was a tablet, whether it
13 was a PC, a desktop, a laptop. I need lots more
14 information in order to apply for a search warrant.

15 Q Okay. And you didn't try and find out any
16 of this information that you would have needed?

17 A I would say I -- I tried with what I could.
18 Yes, I did try.

19 Q Okay. So just a few more questions for
20 you. So you -- essentially, your sole job on this
21 case, you just went on the websites to see if the
22 videos were there?

23 A No. I also prepared three search warrants
24 for service.

25 Q Okay. And you didn't look at whether the

1 venue -- ultimately, I guess, you didn't figure out
2 which of these posts were original and which ones
3 were mirrored?

4 A I -- you know, I -- I think that's been
5 asked and answered. I tried my -- my best.
6 Professional belief here is that the ones -- I mean,
7 clearly, there was duplicate content.

8 So of the videos were the same exact
9 videos. But, again, I'm -- I'm going off of the
10 accounts and they're different accounts. So -- I --
11 I -- and by that I mean views, the views of the
12 videos.

13 MS. HELREGEL: Okay. No further
14 questions.

15 THE WITNESS: Thank you.

16 THE COURT: Ms. Atwood.

17 MS. ATWOOD: Thank you, Judge.

18 REDIRECT EXAMINATION

19 BY MS. ATWOOD:

20 Q So I kind of want to go through some things
21 one by one that you were asked on cross-examination.
22 Starting with the creation of a user name, you were
23 asked whether or not you understood how someone, even
24 possibly anyone, could create a user name online,
25 right?

1 A Yes.

2 Q And defense counsel asked you if there was
3 any way you could be sure who created the user name
4 BarberB, right?

5 A I was asked that, yes.

6 Q During your initial viewing of -- of the
7 websites as part of your investigation, you made
8 mention that there was some identifying information
9 associated with the user name BarberB.

10 A Would you repeat that?

11 Q Let me ask it a different way.

12 A Okay.

13 Q I want to turn your attention to what you
14 investigated as -- on Pornhub.com.

15 A Okay.

16 Q What kind of identifying information did
17 you find on that website, associated with the user
18 name BarberB?

19 A Okay. So a couple of things. On that
20 website, it showed the BarberB was related to a
21 31-year-old heterosexual male in Portland, Oregon.

22 It showed the most recent login to be two
23 months earlier. It -- and then, like I testified,
24 later on, the website provided information that was
25 related to that e-mail address.

1 Q And that was the starworks5@gmail.com?

2 A That's correct.

3 Q Okay. Let's see here. Could you tell when
4 he joined the website?

5 A Yes, that -- well, I learned that later.

6 Q Go ahead.

7 A Okay. So I learned that later. That came
8 back after the search warrant. And it said that
9 the user BarberB, related to the e-mail address
10 starworks5@gmail.com, was registered on 3-31 of 2014.
11 Sorry, March 31st, 2014.

12 Q Okay. So he'd been a member for a pretty
13 long time, it sounds like?

14 A Correct.

15 Q And as far as identifying information, you
16 found on -- let's see. Sorry, let me back up a
17 little bit here. On Porn -- no, not Pornhub. I just
18 asked you about Pornhub. RedTube.com, what
19 identifying information was on that website --

20 A On --

21 Q -- associated with BarberB?

22 A On that website, for the BarberB profile,
23 it shows him to be -- or, I'm sorry, the profile
24 showed the account holder to be a 31-year-old man
25 with an interest in men. It showed him to be in

1 Newberg, Oregon and, again, the last issue -- or the
2 last login to be about five months earlier.

3 Q Okay. So there was some identifying
4 information associated with the user name, right?

5 A Yes.

6 Q Age, location, that sort of thing?

7 A Yes.

8 Q So there is a way to narrow it down to who
9 it is?

10 A Yes. Oh, just to be fair, though, that
11 is -- that's self-reported information.

12 Q What do you mean by that?

13 A So people can type that in, is my
14 understanding.

15 Q When they register on the website?

16 A Right. They -- they assign -- they put
17 their own age in. They put their own location in.

18 Q And, presumably, it would be someone with
19 personal knowledge of that information they would
20 write that information with?

21 A Yeah.

22 Q Okay. And then that -- that narrowing was
23 further narrowed when you got an exact e-mail address
24 associated with this individual?

25 A Yes.

1 Q Okay. You were asked in reference to the
2 website as a whole, whether or not you -- you were
3 asked numerous times whether or not you could be
4 absolutely sure or there was a way to confirm who
5 created these accounts. You did have a chance to
6 review the reports of Deputy Duenas, right?

7 A Yes.

8 Q So you were aware at the time of your
9 investigation that the defendant admitted to
10 creating accounts?

11 A Yes.

12 Q Under the user name BarberB?

13 A Yes.

14 Q Okay. And you were, at one point, cut off
15 a little bit when you were trying to respond to a
16 question about your -- the findings you were made
17 aware of after you got your search warrants executed.
18 What were you made aware of after you got your search
19 warrants executed? What information did they respond
20 to you with?

21 A Okay. So what I got from them was
22 on Thumbzilla, there were -- at one point, there were
23 12 -- 12 videos. Ten had been deleted, but two were
24 still active.

25 Q And what categories of information were

1 they willing to provide you?

2 A So they provided information on how all the
3 videos had been titled. And without exception, all
4 of the videos had been titled "Albino Porn."

5 It showed the status, you know, whether
6 they were still active or whether they were deleted.
7 And then they provided information on when they were
8 uploaded.

9 Q And what did you find when that information
10 was provided to you?

11 A So the information on whether -- or when
12 items were located was the active videos were posted
13 on March 21st of 2016.

14 And a couple of the deleted ones were also
15 post -- posted on that same day, March 21st, 2016.
16 There were also one, two, three, four uploaded on
17 April 19th of 2016. And then there were four videos
18 uploaded on April 21st of 2016.

19 Q You mentioned already that they responded
20 to you with information about what -- the status of
21 the videos being deleted versus active. They did
22 explain to you what "deleted" means?

23 A Just that they had been removed.

24 Q By whom?

25 A Some of them -- some of the sites, they

1 were specific, and I think we talked about this
2 already, was whether it had been removed by the
3 uploader or whether it just wasn't available anymore.

4 Q And just to draw your attention to the
5 response that you received from the individuals at
6 Thumbzilla, can I show you that document --

7 A Sure.

8 Q -- and talk with you?

9 A Oh, so Thumbzilla said that the -- when
10 the -- when the status of the video showed deleted,
11 they were all deleted by the uploader.

12 Q And this is the uploader with the user name
13 BarberB, e-mail starworks5@gmail.com?

14 A Yes, ma'am.

15 Q So there -- it looks like from what you
16 said, there were three individual dates when all four
17 videos were uploaded, first on March 21st, then again
18 on April 19th, then again on April 21st?

19 A That's correct.

20 Q So it looks like this person is repeatedly
21 uploading, removing, uploading, removing --

22 A Yes.

23 Q -- these videos?

24 A Yes.

25 Q What did you learn with respect to the

1 privacy settings that were associated with the
2 videos?

3 A So it looked like videos were uploaded both
4 public and a few of them were private. It looks like
5 mostly public setting, but some were private
6 settings.

7 Q And the two that remained active at the
8 time you were able to start your investigation, what
9 was the setting related to those?

10 A They were available to the public.

11 Q And the time lengths of the videos, was
12 that information relayed to you?

13 A Yes.

14 Q Did the lengths of the videos correspond
15 with the videos you had already collected during your
16 investigation?

17 A Yes.

18 Q Okay. And just as a matter of course, I'm
19 going to show you what I believe is marked as State's
20 Exhibit 16. It's preservation of the videos. Do you
21 recognize this exhibit?

22 A Yes.

23 Q Is that a disk that you prepared through
24 the course of your investigation?

25 A Yes, it is.

1 Q Is that the disk that you were able to
2 record your preservation of these videos on?

3 A Yes.

4 Q And that's the actual original disk that
5 you prepared?

6 A Correct.

7 MS. ATWOOD: Your Honor, we'd offer
8 State's 16.

9 MR. TAYLOR: No objection.

10 THE COURT: Thank you. It'll be
11 received.

12 (State's Exhibit No. 16 received.)

13 BY MS. ATWOOD:

14 Q So the next thing I want to -- oh, and I
15 guess, just as an aside to that, you were asked a few
16 questions about the websites that you did not examine
17 through this portion of your investigation.

18 I want to make sure that it's clear why you
19 limited your investigation. So did you limit your
20 search to websites only where specific links were
21 provided to you?

22 A Yes.

23 Q Why did you do that?

24 A The -- that information came directly from
25 Ms. Vance. I -- I knew it to be accurate and, yeah,

1 it was very specific. So that's -- that's why I
2 focused on that.

3 Q And were you trying to avoid basically
4 going just on a directionless chase for information?

5 A It's a little bit awkward on your work
6 computer with other detectives around to be doing
7 this kind of stuff, so, yes. I did not wander off
8 onto other sites.

9 Q And as far as the sites that you didn't
10 personally go to, PornTube, PornTV, EverySexTube and
11 xHamster, because you read Deputy Duenas' reports,
12 you were aware he had already investigated those
13 websites?

14 A Yes. On the night that he got this case,
15 he and another deputy did look into several websites.

16 Q Okay. And since you read his reports as
17 part of your investigation, you're aware that he had
18 already taken steps to preserve screenshots and the
19 videos themselves --

20 A That --

21 Q -- of those websites?

22 A That was already in evidence, yes.

23 Q Okay. And you were specifically asked a
24 couple questions about Porn.com, which you did
25 attempt to search, right?

1 A Yes, I did look at that.

2 Q This was the website where the profile
3 associated with the defendant showed four videos, but
4 then when you tried to access the videos, it said
5 there were no videos there?

6 A Correct.

7 Q You were asked by defense counsel whether
8 you had any idea -- you personally had any idea what
9 those videos were. Do you remember answering that
10 question?

11 A Yes.

12 Q Okay. And you said that you personally did
13 not -- could not tell from your investigation what
14 they were?

15 A Right.

16 Q So you were aware then that that website
17 was also investigated by Deputy Duenas, right?

18 A It may have been.

19 Q And in referring you to his --

20 A Yes. It looks like it is in his report.

21 Q -- first report, he was able to capture the
22 information that was relevant to those videos?

23 A I'm sorry, can you ask that again?

24 Q Sure. I was just referring you to
25 Deputy Duenas' first report where he describes the

1 websites he visited, including Porn.com. Were you
2 aware that he was able to get screenshots of the
3 videos posted to that website?

4 A I know he was able to get some screenshots,
5 yes.

6 Q Okay. You were asked a few questions about
7 whether or not you attempted to get a search warrant
8 for any specific device, like a computer or a tablet
9 or something like that.

10 A Correct.

11 Q And you stated that not only did you not
12 know what device to ask for, but you didn't know
13 where the device was.

14 A Correct.

15 Q Defense counsel asked you whether you were
16 aware that the defendant had provided his address to
17 the Court during the dependency of this and you said
18 that you expected that had happened?

19 A Right.

20 Q When a case is pending and a person is
21 represented by an attorney, do you generally initiate
22 other contacts with the defendant in that situation?

23 A No.

24 Q Why?

25 A 'Cause they're represented by an attorney.

1 Q So you're not allowed to speak with the
2 defendant in that situation?

3 A In very limited circumstances, right.

4 Q Okay. So in this situation, would you have
5 been able to just go contact the defendant and start
6 asking him more questions about wanting to search
7 his devices?

8 A No. I mean, he would have to waive, you
9 know, his Fifth Amendment rights to -- to talk to me,
10 essentially, right to counsel.

11 Q And that's something that's pretty serious
12 to you to -- to do properly in your job --

13 A Absolutely.

14 Q -- abide by those rules? I want to ask you
15 about mirror websites now. You stated that in your
16 experience, if a website is actually a mirror
17 of another, the contents should appear the same,
18 identical, right?

19 A Right.

20 Q And so in -- in your professional
21 experience, a website wouldn't be a mirror if it
22 reflected a different user name?

23 A No, I -- I mean, I would not think so.

24 Q What about things like different time of
25 joining, different upload date? Would that reflect a

1 mirror to you?

2 A These are all signs that it's different,
3 that it's different content, not -- not shared
4 content.

5 Q And you already mentioned the different
6 number of views was significant to you as these not
7 being mirror websites?

8 A That -- that really stood out to me, yeah.

9 Q Okay. And -- and -- and speaking of the
10 views that you recorded during your interview or your
11 investigation, how many views total would you
12 estimate were seen at this time?

13 A So, again, this is going back to September
14 2nd when I was completing my research on these
15 websites. On September 2nd of this year, there had
16 been 11,357 views of these videos that we've been
17 talking about. These are the ones that were still
18 active.

19 Q Now, getting back to the question of mirror
20 websites, you were asked specifically if, because
21 Pornhub, RedTube and Thumbzilla were affiliates,
22 whether they could be mirrors, right?

23 A Right.

24 Q But in your experience, if different videos
25 appear on two different websites, would that be

1 a mirror?

2 A No.

3 Q And in this case, you, in fact, found that
4 on -- sorry -- Pornhub.com, there were two videos; is
5 that right?

6 A Yes.

7 Q And these were the videos that were how
8 long? What were the lengths?

9 A 16 minute 1 second, 18 minutes 46 seconds.

10 Q But when you traveled to RedTube.com, you
11 located four videos, right?

12 A Correct.

13 Q And these included two that were totally
14 independent from those videos?

15 A Correct.

16 Q So in your experience, would it even be
17 possible to directly mirror content when you don't
18 have access to the content itself?

19 A Correct.

20 Q Does that make sense?

21 A That's fair, yeah, that's right.

22 Q So in this situation, RedTube could not
23 have mirrored from Pornhub because they were
24 reflecting two totally different videos?

25 A Correct.

1 Q And -- and -- and RedTube was also a site
2 where there was a registered user name BarberB?

3 A Correct.

4 Q And then, again, the same information
5 relating to Thumbzilla, you were actually provided 13
6 independent lengths on that website, correct?

7 A Yes.

8 Q And just to clarify, when you applied for
9 search warrants to the Pornhub website, RedTube and
10 Thumbzilla, did you include all the information that
11 you wanted to get from them?

12 A Yes.

13 Q And in your experience, when dealing with
14 pornography websites and executing search warrants,
15 are they typically very cooperative with that type
16 of information?

17 A This is actually my first case dealing with
18 them, but -- but in my field, generally, the answer
19 is no.

20 MS. ATWOOD: Okay. Those are all my
21 questions. Thank you.

22 THE WITNESS: Thank you.

23 THE COURT: Okay. You may set down.

24 THE WITNESS: May I be excused?

25 THE COURT: Any need for him?

1 MS. ATWOOD: Stick around.

2 THE COURT: You may not be excused.

3 THE WITNESS: Thank you.

4 THE COURT: Okay. Ms. Atwood, your
5 next witness.

6 MS. ATWOOD: Judge, the State would
7 recall Meagan Vance at this time.

8 THE COURT: Okay.

9 THE CLERK: If I can have you remain
10 standing and raise your right hand.

11 **MEAGAN VANCE**

12 Was thereupon recalled as a witness on behalf of the
13 State; and, having been duly sworn, was examined
14 and testified as follows:

15 THE CLERK: Thank you.

16 For the record, if I could have you
17 please state your name.

18 THE WITNESS: My name is Meagan Vance,
19 M-e-a-g-a-n, V-a-n-c-e.

20 THE COURT: You may inquire.

21 **DIRECT EXAMINATION**

22 BY MS. ATWOOD:

23 Q I just want to ask you a couple of quick
24 questions about the defendant. You had, obviously,
25 during your relationship, the divorce and after, have

1 had a significant amount of online conversation with
2 him; is that accurate?

3 A Yes.

4 Q Have you ever encountered the user name
5 BarberB?

6 A Yes.

7 Q How many times, would you say?

8 A The entire time I've known him, he has used
9 two user names, BarberB and Endomorphosis (phonetic).
10 He has a website -- or he had or either still has it,
11 BarberB.net. I think he has an e-mail address with
12 that. It's BarberB@BarberB.com. That's all I can
13 remember right now at this time. But it's -- it's
14 since I've met him.

15 Q Okay. And are you familiar with an e-mail
16 address of starworks5@gmail.com?

17 A Yeah. That's the associated e-mail address
18 with him, other than BarberB@BarberB.net, that I've
19 known the entire time I've been with him. And
20 starworks5 is also his user name I met him on
21 OkCupid.

22 MS. ATWOOD: Okay. Those are all my
23 questions. Thank you.

24 MR. TAYLOR: No cross, Judge.

25 THE COURT: Okay. Thank you. You can

1 step down, Ms. Vance. Thank you.

2 Okay. Ms. Atwood.

3 MS. ATWOOD: Your Honor, those are all
4 the State's witnesses. At this time, we'd rest.

5 THE COURT: Okay. Thank you.

6 All right. We're going to go ahead and
7 take a break. So I'm going to have you go ahead and
8 go back into the jury room. We'll call you back out
9 in about ten minutes.

10 (The following proceedings were held in
11 open court, out of the presence of the jury,
12 10:20 a.m.)

13 THE COURT: Okay. So I'm looking at the
14 misdemeanor complaint. So what are we doing with it?

15 MS. ATWOOD: Yeah. So I did prepare a
16 list and I will forward to you now -- well, if I can
17 find it. Here we go -- of the Counts 1 through 9 in
18 order and which website they would refer to. I've
19 forwarded a copy to the defense and to Your Honor.

20 THE COURT: Thank you.

21 Okay. You want a minute to look at
22 that, Mr. Taylor?

23 MR. TAYLOR: Just a minute to compare my
24 notes. Thank you, Judge. And I'll be able when the
25 Court's ready.

1 THE COURT: In a moment, just thinking.

2 MR. TAYLOR: Absolutely.

3 THE COURT: Okay.

4 MR. TAYLOR: So, Judge, first off, as a
5 matter of preservation, at this time I would renew
6 arguments made in our demurrer that my client should
7 be acquitted of all counts because his actions are
8 protected by Article I, Section 9 -- Article I,
9 Section 8 of the Oregon Constitution, as well as the
10 First Amendment of the United States Constitution.

11 If the Court is interested in hearing
12 any additional argument on that point, I'd be happy.
13 Otherwise, I will rest on the arguments that were
14 already made at demurrer.

15 THE COURT: And I will just tell you,
16 Mr. Taylor, I was not the judge that entertained
17 your demurrer and I'm not going to overrule
18 Judge Butterfield's decision.

19 MR. TAYLOR: Understood, Judge. Thank
20 you.

21 THE COURT: Thank you.

22 MR. TAYLOR: So, Judge, at this time, I
23 am going to move for a judgment of acquittal on
24 different grounds. And here's what I'm going to get
25 at. And I think the Court knows where I'm going. So

1 State's brought nine counts. The State's elected --
2 they each apply to a different website.

3 What I'm focusing on, as -- as a
4 preliminary matter, is a voluntary act associated
5 with each website. So this statute requires that he
6 knowingly caused the videos to be posted on the site.

7 And so I'd like to kind of go through
8 each site and recall -- sort of discuss the evidence
9 that seems to have come in or lack thereof with
10 regard to each site.

11 Obviously, Your Honor, no standard is --
12 in light most favorable to the State, could a
13 rational finder of fact find proof beyond a
14 reasonable doubt.

15 I believe that, at least with several of
16 these websites, that proof is, in fact, lacking in
17 this case. So, Judge, I want to start with Count 2,
18 which is RedTube.com. The information we have is
19 that that is a subsidiary of some type of Pornhub,
20 which is Count 1.

21 The information seems to be speculative
22 at best as to whether Mr. Barber was, in fact, the
23 person who uploaded those. Whether -- and -- and
24 what I'm getting at here is particularly -- there's
25 information that whoever the profile was that was

1 BarberB on RedTube.com uploaded the videos in April,
2 specifically, April 6th.

3 According to the deputy, the last logon
4 for that person was five months prior. And, you
5 know, we've gone back and forth with these sites and
6 how they are connected, what sort of shared
7 information there is. And what we know is that,
8 obviously, Pornhub and RedTube are affiliates.

9 It is completely unclear from the
10 State's case whether logging onto and creating an
11 account on Pornhub creates one automatically on
12 RedTube. We know that's certainly possible because
13 they are affiliated.

14 And the question then becomes if, in
15 fact, Mr. Barber uploaded these to Pornhub, what
16 proof is there that there was any separate and
17 distinct act of uploading them to RedTube, given the
18 fact that they are affiliated, things like that.

19 And there is a number of questions
20 regarding, as I mentioned, the dates and how they add
21 up. So it seems like everything relating to RedTube,
22 as far as proof of a voluntary act, is speculative at
23 best. No concrete information exists to distinguish
24 it from the associated website Count 1, Pornhub.

25 So on those grounds, I believe a motion

1 for Judgment of Acquittal should be granted on Count
2 No. 2.

3 THE COURT: Okay. Do you want
4 Ms. Atwood to respond independently. Would that help
5 you?

6 MR. TAYLOR: What -- what would the
7 Court prefer?

8 THE COURT: I -- how -- do you want to
9 respond to each count?

10 MS. ATWOOD: I can do that.

11 THE COURT: Okay.

12 MS. ATWOOD: That might make it a little
13 easier. So just to encapsulate the information
14 that's been relayed both through the witnesses and
15 through the exhibits that the State has provided,
16 which will be available to the jury, as I mentioned
17 pretrial, I did not intend to play these videos or,
18 you know, display these screenshots in court here
19 today.

20 I -- I think that that would have been
21 inappropriate in light of the nature of the charge.
22 But the screenshots and the videos themselves do
23 relay a significant amount of information that the
24 jury is going to have at their disposal, including
25 the fact that not only was this the same user name

1 that was associated with the defendant, but that on
2 RedTube, his login -- or his join information said
3 that he joined in April 2016, as opposed to Pornhub,
4 which he had joined in 2014.

5 The last login dates were different on
6 each of those websites. The videos themselves are
7 different on each of those websites. And the
8 detective testified that in his experience, a login
9 date can be misleading because a person may remain
10 logged in for a substantial period of time without
11 logging out.

12 And that would skew the date as far as
13 the last time a video could have been posted. So I
14 think that the fact that the defendant was the only
15 one to possess these videos, that's been established
16 through the evidence, he had a clear motive to
17 continue posting them and that he was posting them
18 around these same times of April 2016.

19 That information was relayed by the
20 detective through the search warrant response, that
21 there is easily more than enough information for him
22 to be found independently guilty on the Count 2
23 RedTube account, as opposed to the Count 1 Pornhub
24 account, because there is clearly different
25 information on each of those, indicating a wholly

1 independent user profile.

2 THE COURT: Okay. And in reviewing my
3 notes, it's clear that they have different contents
4 on them and so I will deny the motion for judgment of
5 acquittal in the light more favorable to the State on
6 Count 2.

7 MR. TAYLOR: Thank you, Judge. I'll
8 turn now to Count 3, which is Porn.com. Judge,
9 obviously, similar grounds. I'm moving here looking
10 for a voluntary act showing there was some separate
11 and distinct transaction with regard to Porn --
12 Porn.com.

13 What we seem to know about that side is
14 that the videos, whatever they were, if they existed,
15 were not found by the detective. He -- I believe the
16 quote I have written down is that he had no idea what
17 they were.

18 And we lack generally, any specificity
19 as to Porn.com and what is associated with that. So
20 I move on those grounds on that count.

21 THE COURT: Okay. And I believe that
22 there's testimony and video from Duenas on Porn.com
23 because I --

24 MS. ATWOOD: That is correct.

25 THE COURT: -- I reviewed the videos so

1 that I could accurately address these issues. So
2 there is sufficient evidence on Porn.com.

3 MR. TAYLOR: And, Judge, we'll move on
4 to TNAFlix. TNAFlix and EMPFlix, which is Count 7,
5 these ones get very strange. What we know -- and I'm
6 looking at the State's --

7 THE COURT: Go ahead.

8 MR. TAYLOR: I'm looking at some of
9 the State's evidence, one of their e-mails with
10 Detective Rookhuyzen from the PornHub-Thumbzilla
11 search warrant returns.

12 Note that this -- and this is from Joyce
13 Karestia (phonetic). "Note that Thumbzilla is just a
14 mirror of Pornhub; therefore, the user information
15 recorded is the same."

16 So, Judge, with regard --

17 THE COURT: Repeat that.

18 MS. ATWOOD: Wait.

19 THE COURT: I'm sorry, Mr. Taylor. Were
20 you talking about --

21 MS. ATWOOD: I thought we were talking
22 about TNA?

23 THE COURT: -- TNA or -- now, you're
24 going -- talking about Thumb --

25 MR. TAYLOR: My mistake.

1 THE COURT: Okay.

2 MR. TAYLOR: So, sorry.

3 THE COURT: That's okay.

4 MR. TAYLOR: We're talking about TNAFlix
5 and EMPFlix, specifically, TNAFlix. On TNAFlix, they
6 seem to have found two videos.

7 My notes seem to indicate that there is
8 not much beyond that linking or -- or any sort of
9 further detail demonstrating that there was any,
10 again, separate, voluntary act. And admittedly,
11 Your Honor has the exhibits in front of them -- you
12 and I do not.

13 THE COURT: And this is Exhibit 9 and
14 indicating, by BarberB, 52 views, with the
15 photographs. So as to TNA, I believe there is
16 sufficient evidence to proceed. However, I don't --
17 if you'd like to address Count 7, I think you were
18 kind of addressing that. I don't recall any evidence
19 on EMPFlix.com.

20 MS. ATWOOD: Sure. So some of that also
21 appears in the exhibits. EMPFlix was -- it is an
22 affiliate of TNAFlix, but there were four videos
23 uploaded. Those links were preserved by the victim
24 in June 2016. They're part of her list. And then
25 the videos were shown to have been removed before

1 September 2016.

2 In looking at the case, as far as the
3 circumstantial evidence is concerned, that matches
4 with the timeline of the victim contacting law
5 enforcement, who then tried to contact the defendant,
6 who then went on, I guess as a response to his
7 posting spree, a removal spree of the videos, trying
8 to clean up the trail associated with the case.

9 So the links were there and the victim,
10 her testimony and the exhibits associated with her,
11 can confirm that. However, the fact that they were
12 removed shows that -- the voluntary act of removal
13 would have required a -- a voluntary act of posting.

14 So I think that that's enough
15 circumstantial evidence that the defendant did engage
16 in this act. And legally speaking, the statute in
17 question does indicate that to find the person guilty
18 of this crime, he has to cause to be disclosed
19 intimate images of another person on an internet
20 website.

21 We've heard testimony already that the
22 defendant is a very tech-savvy and computer-aware
23 person who does a lot with the internet, including
24 his own job and including harassing the victim in
25 several ways.

1 And I think that the jury could find,
2 considering he clearly has been a member of several
3 porn websites, some of them for years at this point,
4 that he knew that he would cause to be disclosed any
5 information that he had posted to a website,
6 potentially, to its affiliate whose information is
7 linked to the same site.

8 So on either ground, I think there's
9 evidence to find he voluntarily did it independently
10 on EMPFlix and then voluntarily and intentionally
11 removed them because the videos on TNAFlix were still
12 available or in the alternative, that he voluntarily
13 and intentionally posted the videos on TNAFlix with
14 the full knowledge that they would end up on EMPFlix.

15 THE COURT: Mr. Taylor.

16 MR. TAYLOR: Judge, we would disagree
17 with the State's assertion that some sort of
18 knowledge of something that could happen down the
19 line qualifies as a voluntary act in this -- for a
20 separate and distinct transaction as the counts are
21 charged.

22 I also disagree with the -- the State's
23 assertion that there is substantially different
24 evidence between TNAFlix versus EMPFlix. And I would
25 also point out that the fact that somebody later went

1 and tried to clean up videos -- we obviously know
2 Mr. Barber did that at Ms. Vance's request or -- or
3 what appeared to be a request for that.

4 The fact that he went around the
5 internet looking for things to try to clean up does
6 not show, by any means, that he committed a separate
7 act posting these to EMPFlix versus TNAFlix.

8 MS. ATWOOD: Can I clarify, Your Honor?

9 THE COURT: Mm-hmm.

10 MS. ATWOOD: So my argument more gets to
11 the fact that there were two videos posted to each
12 TNAFlix and EMPFlix.com. They were both visible to
13 the victim and their links were preserved by her.

14 However, what is striking about the
15 videos themselves is that the videos posted to
16 TNAFlix were still active by September 2016, whereas
17 the videos posted to EMPFlix had been removed by
18 September 2016.

19 And as you heard from the deputy, his
20 testimony -- or the detective's testimony, in his
21 experience, a website that's truly a mirror would
22 reflect the same content.

23 MR. TAYLOR: Judge, I would only point
24 out that the deputy didn't know -- I do not believe
25 could offer any sort of certainty to that testimony.

1 He offered his belief and that was about it and no
2 sort of explanation or extrapolation on the technical
3 mechanics of why his belief that they would have the
4 same number of views would be the same because what
5 clearly seems to happen, based on the discussions
6 we've had during this case, is that pornographic
7 videos get put online and then other pornographic
8 websites copy them to increase their own amount of
9 content.

10 THE COURT: Well, I don't think
11 anybody's been -- presented an expert witness to tell
12 us what pornographic websites do. So I don't think
13 that's in evidence or it can be considered and it
14 probably shouldn't even be argued 'cause you don't
15 have that sort of expert testimony here to tell the
16 jurors what happens to pornographic websites.

17 But I -- I mean, I think on Counts 6 and
18 7, I just don't think there's enough. And so I will
19 grant the JOA on Thumbzilla and the EMPFlix. There's
20 nothing -- there's no BarberB profile. There's no
21 links on EMPFlix. And so I will grant the JOA on 6
22 and 7.

23 As to 5, I think there's sufficient
24 evidence on XHamster. And that's the screenshots
25 that are presented and the user name and then

1 obviously his own admission that he posted them on
2 XHamster. So anything else?

3 MR. TAYLOR: That leaves us with just 8
4 and 9, Judge.

5 THE COURT: Mm-hmm.

6 MR. TAYLOR: So PornTV and PornTube were
7 both ones that Deputy Rookhuyzen did not speak to in
8 the least, which means that we are left with what
9 Deputy Duenas and Ms. Vance had to say about those.
10 And, again, Judge, Deputy Duenas, by and large, was
11 very surface level as far as his discussion of what
12 he did.

13 When I asked him point blank, "Can you
14 tell us which videos were on which sites?" he looked
15 at me and said, "No, I cannot at this time." So I
16 don't think, again, there is evidence of any sort of
17 separate or distinct act about PornTube or PornTV.

18 We don't have -- we didn't get anything
19 from Detective Rookhuyzen about whether those are
20 independent sites, different times of upload, things
21 like that. So the evidence the State has relied on
22 to prove separate and voluntary acts in most of its
23 argument is greatly lacking with regard to PornTube
24 and PornTV, from what my notes show.

25 THE COURT: Okay.

1 MS. ATWOOD: May I respond?

2 THE COURT: Mm-hmm.

3 MS. ATWOOD: Your Honor, with reference
4 to PornTV, Deputy Duenas' testimony not only includes
5 the fact that the user name associated on that
6 website was BarberB, but that the four videos labeled
7 "Albino Porn" were all there.

8 He had preserved them in screenshots
9 that are in the State's exhibits that we've offered
10 today -- or yesterday, I guess. And with reference
11 to this website, it's not an affiliate of any of the
12 websites and -- and I think that's clear in the
13 exhibits themselves.

14 So I think there is sufficient evidence
15 regarding PornTV due to the unique user name
16 associated with this person, the titles of the
17 videos, the fact that the website's independent and
18 the fact that we have all this information preserved
19 in screenshots and video is sufficient for Count 8.

20 THE COURT: I did not note in my review
21 anything about PornTV in -- in looking at the videos
22 that were presented in evidence yesterday. So I'm
23 probably -- I need to just double check that and see.

24 I apologize, I -- I just -- I don't have
25 that evidence right in front of me and I don't show

1 the screenshots in the State's Exhibit 9. I don't
2 have anything either, so I'm -- I'll give you a
3 ruling on that in a minute.

4 MS. ATWOOD: Sure.

5 THE COURT: That's PornTV and PornTube.
6 I'm sort of in the same situation.

7 MS. ATWOOD: Again, PornTube was one of
8 the websites that was investigated by Deputy Duenas.
9 That was the one -- the only one that he was actually
10 able to capture, download the videos themselves from.
11 And there were uniquely three videos uploaded to that
12 website which differentiate from the others.

13 And I think that again the fact that
14 they're the videos that only the defendant had
15 possession of would be sufficient evidence in the
16 light most favorable to the State.

17 THE COURT: Okay. So let me go look at
18 those.

19 Anything else, Mr. Taylor?

20 MR. TAYLOR: I would respond by only
21 saying I understand what the State is saying, but I
22 don't think any of that speaks to the separate and
23 voluntary act that we're looking for. So --

24 THE COURT: Okay.

25 MR. TAYLOR: -- that's where I'm at

1 with those.

2 THE COURT: All right. And let me just
3 go, again, look at the evidence I have regarding
4 those two.

5 MR. TAYLOR: May I?

6 THE COURT: So if you don't mind, we'll
7 just take a five-minute break while I do that.

8 MR. TAYLOR: Thank you very much, Judge.

9 THE COURT: Okay. Thank you. Or ten
10 minutes.

11 (Recess taken, 10:39 a.m. - 10:53 a.m.)

12 THE COURT: Okay. Thank you. So I had
13 an opportunity to review the videos and Deputy
14 Duenas' testimony. So there is sufficient evidence
15 on Counts 8 and 9 to proceed forward. So judgment of
16 acquittals as to 6 and 7.

17 MR. TAYLOR: And that's all I have for
18 the Court at this time.

19 THE COURT: Okay. And at this time, are
20 we ready to resume?

21 MR. TAYLOR: Yes, Judge.

22 MS. ATWOOD: I guess, are you going to
23 have a colloquy with him or is he just doing --
24 testifying?

25 THE COURT: I assume he's testifying.

1 MR. TAYLOR: He's going to testify.

2 MS. ATWOOD: Okay. Then the only thing
3 that I wanted to bring to your attention was just to
4 renew my concern about the defendant trying to bring
5 up the fact that he's filed this federal case against
6 the victim or her attorney or me during the course of
7 his testimony.

8 I don't think that that would be proper
9 testimony at all, in addition to the fact that the
10 victim has retained an attorney during the pendency
11 of this case. That was asked of the victim during
12 her cross-exam. I objected to it and you sustained,
13 so I would hope that the same ground rules would be
14 linked for his testimony.

15 THE COURT: Okay. And my understanding
16 is that the federal stuff isn't coming in?

17 MR. TAYLOR: I have no intention of
18 going anywhere near that.

19 MS. ATWOOD: It's --

20 THE COURT: And you've had a discussion
21 with your client regarding the fact that that's not
22 coming in?

23 MR. TAYLOR: Maybe I'll step outside,
24 have a real quick --

25 THE COURT: Okay.

1 MR. TAYLOR: -- further discussion on
2 that point. If you'll give us two minutes --

3 THE COURT: Sure.

4 MR. TAYLOR: -- Judge.

5 THE COURT: Of course.

6 MR. TAYLOR: Okay.

7 (Recess taken, 10:55 a.m. - 10:57 a.m.)

8 THE COURT: Okay. So you've had an
9 opportunity to have a conversation with your client,
10 correct?

11 MR. TAYLOR: Yes, Judge. Thank you.

12 THE COURT: Okay. Anything else then?

13 MR. TAYLOR: No, just stretching.

14 THE COURT: Okay. Great. We'll go
15 ahead and bring the jury back.

16 And, Mr. Taylor, will you be doing the
17 direct?

18 MR. TAYLOR: Correct.

19 THE COURT: And this will be your
20 only witness?

21 MR. TAYLOR: Yes.

22 THE COURT: And I think we'll probably
23 go a little bit into the noon hour if we need to.

24 MR. TAYLOR: And then close afterwards?

25 THE COURT: Yeah. Well, I don't know

1 if Ms. --

2 MR. TAYLOR: All right.

3 THE COURT: (Indiscernible).

4 MR. TAYLOR: Whatever we need to do.

5 (The following proceedings were held in
6 open court, the jury being present, 10:58 a.m.)

7 THE COURT: Okay. You may call your
8 first witness.

9 MR. TAYLOR: Judge, at this time, the
10 defense calls the defendant, Benjamin Barber.

11 THE CLERK: I'll have you remain
12 standing and raise your right hand.

13 **BENJAMIN JAY BARBER**

14 Was thereupon called as a witness on his own behalf;
15 and, having been first duly sworn, was examined and
16 testified as follows:

17 THE CLERK: Thank you. You may be
18 seated.

19 For the record, if I could have you
20 please state your name, spelling first and last.

21 THE WITNESS: My name -- my name is
22 Benjamin Jay Barber, B-e-n-j-a-m-i-n, J-a-y,
23 B-a-r-b-e-r.

24 THE COURT: You may inquire.

25 MR. TAYLOR: Thank you, Judge.

DIRECT EXAMINATION

BY MR. TAYLOR:

Q Good morning, Mr. Barber. How are you doing today?

A Stressful.

Q Why are you stressed out?

A 'Cause I didn't sleep very much.

Q Okay. You nervous?

A Yeah.

Q All right. Let's start with some basic questions, all right?

A Yeah.

Q How old are you?

A 31 years old.

Q What do you do for work?

A I -- my last position was called infrastructure engineer at Intel and I'm also a software engineer.

Q Do you have a college degree?

A No.

Q Do you have a law degree?

A No.

Q All right. Where do you live?

A I live at 165 Northeast Jackson Street, Hillsboro, Oregon 97124.

1 Q So, like, right over there?

2 A Yeah.

3 Q All right. How long have you lived there?

4 A I've lived there since June.

5 Q All right. More basic questions. Do you
6 know the complainant in this case, Ms. Vance?

7 A Yes.

8 Q How long have you known her?

9 A I've known her since 2009.

10 Q And are we correct that you guys had a
11 romantic relationship and then were later married?

12 A That's correct.

13 Q All right. Let me ask you some questions
14 about that relationship, all right?

15 A Mm-hmm.

16 Q All right. When did you first meet
17 Ms. Vance?

18 A I first met Mrs. Vance in -- I'm sorry,
19 Ms. Vance, rather, in the fall of 2009 on the website
20 OkCupid.

21 Q All right. What caused you guys to click?

22 A In that we both had experienced problems
23 with vision and that she wanted to use her career in
24 order to help people that had vision issues, as did
25 I, but using technology.

1 Q All right. What kind of vision problems do
2 you have?

3 A I was shot in the eye during a training
4 exercise in the Reserve Officer Training Corps.

5 Q When you guys first met, were you guys
6 living in the same area?

7 A No, I was living in Portland, Oregon. She
8 was living in northwest Ohio.

9 Q All right. When you guys first met, was
10 it automatically a romantic relationship or was it
11 platonic for a time?

12 A It was platonic for a time.

13 Q About how long?

14 A For at least six months.

15 Q All right. How did it come to turn into a
16 romantic relationship?

17 A Basically, we were talking about her
18 romantic endeavors and I was trying to give her
19 advice in regards to those. And then eventually we
20 became more romantically attached to each other.

21 Q All right. So it just kind of worked its
22 way into place?

23 A Yeah.

24 Q Mutual attraction?

25 A Yeah.

1 Q All right. How old were you at this time?

2 A 25.

3 Q And how old was Ms. Vance?

4 A 20. No. Actually that's when we got
5 married, I think, was when -- well, yeah. I think 20
6 to 25 would be correct.

7 Q All right. Was it a serious relationship?

8 A Yeah.

9 Q Like, right from the get go or did it kind
10 of ease into that?

11 A It had to ease into that, from platonic
12 into a serious relationship.

13 Q So when you guys first started dating, were
14 you guys -- were you guys still not living in the
15 same towns?

16 A Yeah, that's correct.

17 Q All right. How long did you all have this
18 long-distance relationship for?

19 A I'd say another -- probably over a year,
20 so, like, maybe a year and six months or so.

21 Q All right. How'd that work? Did you guys
22 see each other?

23 A Yes. Every two months, one of us would fly
24 across the country to see the other or between
25 two-weeks and one-month --

1 Q All right.

2 A -- period of time.

3 Q Was that difficult or stressful for you
4 guys to work with?

5 A Yeah, it was -- yeah. It was stressful
6 in both scheduling and retaining work and also the
7 finances involved with flights.

8 Q All right. Did you guys end up moving in
9 together at any point?

10 A Yes, we did.

11 Q When was that?

12 A That was, I think, in June of 2012. No, at
13 the beginning of June 2013, sorry.

14 Q So was that before or after you got
15 married?

16 A That would be after we got married.

17 Q So you guys got married when you were still
18 long distance?

19 A That's correct.

20 Q All right. I need to ask you some
21 questions about the sexual side of your relationship
22 with Ms. Vance, all right?

23 A Yes.

24 Q All right. Obviously, your relationship
25 was a sexual relationship?

1 A That's correct.

2 Q Was it a monogamous relationship?

3 A No, it was not.

4 Q Can you expand on that? Why was it not a
5 monogamous relationship?

6 A Because she isn't heterosexual and she has
7 an attraction to both men and women and I allowed her
8 to have a non-monogamous relationship with me.

9 Q All right. Did you guys have, like, an
10 expressed agreement to that effect, that it was going
11 to be a non-monogamous relationship?

12 A Yes. In our marriage contract, I had
13 stipulated that she would be able to have
14 relationships with members of the same sex.

15 Q But prior to that, when you guys were just
16 dating, did you guys talk about it?

17 A Yes.

18 Q All right. Would you characterize y'all's
19 sexual relationship as on the conservative end of the
20 spectrum or the more progressive side of the
21 spectrum?

22 A The more progressive side of the spectrum.

23 Q All right. Why would you say that?

24 A That was because we engaged in a lot of
25 behavior that isn't very conservative in regards to

1 our sexual activities.

2 Q Can you give me some examples of that?

3 A Yeah. That would include having group sex,
4 having sex in public or outdoors. It involved going
5 to swinging clubs like the Paris Theatre, being the
6 volunteer organizers for the Naked Bike Ride.

7 Q All right. Did you guys participate in the
8 Naked Bike Ride?

9 A We were actually the -- a part of the
10 organizing group of the Naked Bike Ride.

11 Q All right. What is the Naked Bike Ride?

12 A The Naked Bike Ride is an event where
13 thousands upon thousands of people get naked and
14 ride through the streets of Portland.

15 Q In a public place?

16 A In a public place, yeah.

17 Q And you guys both did that?

18 A Yes. We were both naked in -- when we
19 did that.

20 Q All right. Who was the driving force
21 behind this more progressive sexual side of things?
22 Was one or the other or was it a mutual thing?

23 A It was mutual, but in November 26th of
24 2010, she stated to me that, "I cannot do routine sex
25 thing for a while; it's just boring."

1 Q Mr. Barber, if you could just talk to me.

2 A Yeah.

3 Q All right. All right. So let's clarify
4 that. Can you answer my question again? Who was the
5 driving force or was it either party or was it a
6 mutual thing?

7 A It was primarily her, but I'm not too
8 conservative or worried about conservative morals.

9 Q All right. So were you guys both
10 interested in doing these activities?

11 A Yeah.

12 Q Did you force Ms. Vance to do them?

13 A No.

14 Q Did you coerce her into doing them?

15 A No.

16 Q All right. So we heard a good bit of
17 testimony from her yesterday that all this stuff,
18 was -- was your idea and she felt like she was
19 pressured into it and things like that. Do you
20 recall hearing that testimony?

21 A I recall hearing that testimony.

22 Q Is that your recollection of what y'all's
23 relationship was like?

24 A No.

25 Q All right. So let's talk about some of

1 these sort of specific activities. You mentioned
2 some voyeurism. Can you expand on that? What did
3 you guys -- did you guys engage in voyeurism?

4 A I mean, we engaged in watching other people
5 have sex; and, for instance, the Paris Theatre. And
6 we were having sex in public places, like municipal
7 parks and in, for instance, theaters and, like, OMSI.

8 Q And what time period was all this
9 happening? Was this when you were dating, when you
10 were married, all of it?

11 A That was all of it, yeah.

12 Q All right. Did you guys engage or seek
13 out other couples or partners to have sexual
14 relationships with?

15 A Yes.

16 Q And where did you look for those types
17 of people?

18 A OkCupid and on Craigslist.

19 Q All right. And, again, sort of following
20 up with Ms. Vance's testimony yesterday, what is your
21 recollection of whose idea that was? Was -- did you
22 guys have discussions about it? Was anyone forced
23 into doing it?

24 A Nobody was forced into it. Basically, my
25 understanding was that she had some bisexual

1 tendencies that she never got to explore and if we
2 got married, she would never get to explore that.

3 And so I was fine with her having other
4 relationships as long as they were not romantic and
5 didn't interfere in our relationship with each other.
6 And we were both aware of what was going on with the
7 other person's partner. And so that was, you know,
8 fine with me at the time.

9 Q So do I understand, contrary to what
10 Ms. Vance said yesterday, that you were not the
11 driving force behind this behavior?

12 A That's correct.

13 Q All right. Following up in this same line
14 of questionings, did you two ever make any forms of
15 pornography, whether that's videos, pictures,
16 whatever?

17 A Yeah.

18 Q All right. What types of pornography did
19 you guys create?

20 A We created audio/visual and pictorial forms
21 of pornography.

22 Q So videos and pictures?

23 A That's correct.

24 Q All right. And why'd you do that?

25 A Well, we were doing that for several

1 reasons. One was because we were trying to, I guess,
2 capture some excitement in our lives. We also were
3 sharing them when we were apart from each other, so
4 we would have video chats on Skype, for example.

5 Or when we would go down -- when we go out
6 to, for instance, the Bagby Hot Springs, we'd be nude
7 and take pictures of each other or we'd take pictures
8 of each other in bedrooms or we took videos of each
9 other. And we also shared these with other people on
10 Craigslist and on OkCupid.

11 Q All right. So I guess I'm going to follow
12 up asking you some questions about the sharing. You
13 said you shared these photos with other folks on
14 Craigslist and OkCupid?

15 A Yeah.

16 Q And what the purpose of sharing them with
17 other people on those websites?

18 A Because when you're soliciting sex with
19 other people, you generally want to know whom or what
20 they're going to be like when you're going to meet
21 them in person.

22 Q And was Ms. Vance aware that these photos
23 were going onto these websites?

24 A Yes, she was. And she was a participant in
25 these experiences and was actually what's called

1 carbon copied in the e-mail chains between these
2 participants and also replied to them and had seen
3 their pictures in addition.

4 Q So Ms. Vance was aware that this was all
5 going on?

6 A Yeah. And she was carbon copied and had
7 actually seen the pictures of the other people
8 involved and these videos were produced mere days
9 before we had solicited encounters with other people
10 and she was CCed into those e-mails and responded to
11 e-mails coming from those other people directly
12 to her.

13 Q And what was her attitude about all this
14 sharing of photos and videos and things like that?

15 A It was actually exciting. It's
16 exhilarating, you know, to have a rush to have
17 someone find you attractive, to have some new and
18 novel experience you didn't have before. It's
19 exciting.

20 Q All right.

21 A Yeah.

22 Q Ms. Vance talked to us some yesterday about
23 long conversations you guys seemed to have had about
24 these photos and videos and never distributing them
25 to anyone else. Do you recall her giving that

1 testimony?

2 A No.

3 Q Do you recall her saying that yesterday?

4 A Oh, yes, I recall her saying that
5 yesterday. I don't recall the original statements
6 that she stated.

7 Q All right. So from what you remember, did
8 you guys have these conversations?

9 A No. I don't recall us having these
10 conversations because otherwise, we wouldn't have
11 been sharing these photos with other people.

12 Q Did she express concerns to you about these
13 things impacting her possible career or things
14 like that?

15 A No. Because if that was the case, then we
16 wouldn't have been organizing the Naked Bike Ride
17 together, being taken photos of by the Willamette
18 Week Nude Painting of people in public.

19 Q All right. So you're saying she must not
20 have been concerned in your opinion because you guys
21 were out naked in public and getting photographed and
22 things like that?

23 A Yeah.

24 MS. ATWOOD: Objection, Your Honor. He
25 can't speak to what the victim's concerns were.

1 THE COURT: Okay. That will be
2 sustained and you'll disregard his response. It will
3 be stricken. Thank you.

4 BY MR. TAYLOR:

5 Q I guess just to recap then, Mr. Barber, do
6 you recall Ms. Vance ever telling you that she was
7 concerned around this time about possible
8 ramifications of y'all's activities?

9 A No. She never expressed that she was
10 concerned about them.

11 Q Were there any other uses that you guys had
12 for this pornographic material you were making? You
13 said enjoying it yourselves and also using it to
14 solicit other couples. Any other uses?

15 A We also had a -- a friend named Ashley
16 Caron (phonetic) who had talked to us about her
17 work --

18 MS. ATWOOD: Objection, Your Honor.
19 Hearsay.

20 THE COURT: Sustained.

21 THE WITNESS: We also solicited --

22 THE COURT: Sir.

23 THE WITNESS: What?

24 THE COURT: When the question is
25 sustained, that means you don't answer.

1 THE WITNESS: Oh, okay.

2 THE COURT: Okay.

3 BY MR. TAYLOR:

4 Q Did you do anything else with these videos?

5 A We solicited offers of making commercial
6 pornography.

7 Q All right. How did that come about?
8 Without discussing things other people told you, but
9 how did you and Ms. Vance come to discuss that issue?

10 A We were underneath the impression that
11 there was a substantial amount of money to be made
12 and that it would be able to supplement our income
13 and so we solicited people who were commercially
14 producing pornography on the website Backpage.

15 Q All right. Was Ms. Vance aware of this?

16 A Yes.

17 Q Did you guys have conversations to
18 that effect?

19 A Yes.

20 Q All right. Did she express any concerns to
21 you then about that activities and behavior?

22 A No.

23 Q All right. So when did you guys make the
24 videos that are in question in this case?

25 A Between December 31st of 2010 and January

1 6th of 2011.

2 Q Where were they made?

3 A They were made in my bedroom.

4 Q We heard Ms. Vance testify yesterday that
5 she was uncomfortable making these videos and things
6 like that. Is that what you recall?

7 A No.

8 Q Did she ever express to you during the
9 making of these videos that she was uncomfortable or
10 concerned or anything like that?

11 A No.

12 Q What did she say?

13 A We were in the talks about looking for
14 other couples and going to swinging clubs, which we
15 hadn't been to, or the Paris Theatre a couple of days
16 prior to this experience of making these films and
17 that we were trying to find -- I mean, the Paris
18 Theatre has, I guess, older folks. And we were
19 trying to find some younger folks to be with.

20 Q All right. Did you guys eventually meet
21 any other people that you were interested in having
22 sex with?

23 A I mean, we discussed it with some other
24 people, yes.

25 Q As part of that, did you ever exchange

1 these videos in question with any other people?

2 A Yes. I had uploaded these to my FTP server
3 and had shared them with the other couple with a
4 password-protected account.

5 Q All right. So let's expand on some of
6 that. What can you explain in very lay terms what an
7 FTP is?

8 A An FTP is essentially sort of like a
9 private cloud that you, yourself, control, as opposed
10 to a public cloud, which anyone can access. And you
11 can use that for sharing files to each other or to
12 other people.

13 Q So do I understand correctly, it's kind of
14 like the -- the iCloud a bunch of us might have where
15 it's this server up in the internet ether where the
16 person who owns it can put documents, videos, things
17 like that?

18 A Yes, except for not owned by Apple.

19 Q Right. And following up with something
20 else you said, you can share that information with
21 other people?

22 A Yeah.

23 Q And how do you do that?

24 A You would give them the URLs, the universal
25 resource locator, to those files, along with an

1 access password and user name to be used to be able
2 to authenticate against.

3 Q So, basically, you send him a link and
4 a password?

5 A Yeah.

6 Q All right. And once somebody has the link
7 and the password, can they then access that material?

8 A Yeah.

9 Q And what can they do with it? Can they
10 just view it? Can they download it?

11 A They can download it. They can view it.

12 MS. ATWOOD: Your Honor, I'm going to
13 object at this point. I feel like he's not
14 established a foundation for his knowledge of how
15 this works.

16 THE COURT: Sustained.

17 BY MR. TAYLOR:

18 Q Mr. Barber, what do you do professionally
19 for work?

20 A I am a cloud systems engineer at -- I was
21 previously a cloud systems engineer at Intel where I
22 managed 6,000 servers that had 21,000 genomes for the
23 Knight Cancer Institute.

24 Q How long have you been doing this type of
25 work for?

1 A Over ten years.

2 Q In your time doing this type of work, have
3 you used things like FTP servers and cloud servers?

4 A Extensively.

5 Q All right. If you had to ballpark, what
6 percentage of your professional working life is
7 involved with these types of servers?

8 A 100 percent of my work involves using
9 servers.

10 Q Does that include FTP servers?

11 A That includes FTP servers.

12 Q Now, returning to the questions I was
13 asking you, once somebody has the password and link
14 to an FTP cloud, can they download material?

15 A Yeah.

16 Q Once somebody has done that, do you have
17 any control over what they do with it?

18 A They can recopy it to any device that they
19 have. They can put it -- upload it to another
20 web service.

21 Q So, basically, they can do whatever they
22 want with it?

23 A Yeah.

24 Q All right. So getting back to the story
25 you were telling us, you guys met another couple.

1 Did you exchange the links to the FTP and password
2 information with them where this pornography was
3 stored?

4 A Yeah.

5 Q Was Ms. Vance aware that this had happened?

6 MS. ATWOOD: Your Honor, I'm going to
7 object. He has no knowledge of the personal
8 awareness. He can't testify to that.

9 MR. TAYLOR: I'll rephrase.

10 THE COURT: Thank you.

11 BY MR. TAYLOR:

12 Q Did you and Ms. Vance have discussions
13 about that happening?

14 A Yes.

15 Q Did she indicate to you at that time any
16 concerns about it getting out or anything like that?

17 A No. And she was carbon copied into the
18 e-mail chains themselves.

19 Q So yesterday, Ms. Vance testified that you
20 guys had, specific to these videos, an express
21 agreement to keep them under lock and key, to never
22 give them to anyone or let anyone see them. Is that
23 what you recall about these?

24 A That's not what I recall.

25 Q What do you recall about any, if any,

1 discussion of what these videos were going to be
2 used for?

3 A My discussion was in regards to using them
4 to try to find other couples who were younger than
5 the older couples that we had seen at the Paris
6 Theatre and trying to find someone that we could have
7 some group sex with and also maybe make some
8 pornography and use them for -- for solicitations.

9 Q All right. Let's turn away from sex and
10 pornography for a bit. Did you and Ms. Vance
11 eventually get married?

12 A Yeah.

13 Q When was that?

14 A That was in December 27th of 2012.

15 Q And you testified earlier that shortly
16 after that, you guys ended up moving in together in
17 early 2013?

18 A That's correct.

19 Q All right. When you guys got married, how
20 were things going in your relationship just
21 generally? Good, bad?

22 A Well, she was still trying to complete
23 her undergraduate degree. And she was underneath a
24 tremendous amount of stress and had dropped -- or
25 chosen to drop out of her undergraduate degree. So I

1 had flown to Ohio to try to help her with her
2 homework and get her graduated so she could come move
3 to Portland.

4 Q So you guys were having some stress in your
5 relationship?

6 A Yeah.

7 Q All right. It is obviously correct that
8 you and Ms. Vance are no longer married?

9 A That is correct.

10 Q When did you get divorced?

11 A We got divorced in April 2015.

12 Q All right. So, obviously, the marriage did
13 not work. Is that a fair statement?

14 A That's a fair statement.

15 Q All right. Is it a fair statement that it
16 was mutually not working?

17 A I was making a significant amount of effort
18 to try to make it work, but it was not working, yes.

19 Q All right. After you guys got divorced, so
20 I guess we're talking early 2015, how did you feel
21 about Ms. Vance?

22 A I felt that she had an extremely negative
23 view of me and had specifically done a lot to try to
24 inflict emotional distress in me.

25 Q All right. And that's part of the whole

1 divorce and all that type stuff that's been discussed
2 throughout this trial?

3 A Yeah.

4 Q So there was a lot of negative feelings, it
5 sounds like, both ways. Would you agree with that?

6 A That's correct.

7 Q All right. And I had some discussion with
8 Ms. Vance yesterday about some sort of back-and-forth
9 mutual threats you guys made to each other about, you
10 know, fraud and blackmail and things like that?

11 A Yeah.

12 Q Was that an accurate account of sort of how
13 that went, you guys both back and forth?

14 A I would usually try to refrain and she
15 would escalate things to try to forcefully get her
16 way.

17 Q All right. During this time, did you want
18 to continue a relationship with Ms. Vance?

19 A One of our marriage agreements were that we
20 would be able to seek marriage therapy together and
21 we had never gone to marriage therapy together. And
22 I was asking and begging for that to happen.

23 Q All right. So you wanted to do therapy and
24 possibly reconcile?

25 A That's correct.

1 Q All right. During -- so -- so the divorce
2 was a long divorce, correct?

3 A Mm-hmm.

4 Q Ms. Vance moves out in late 2013. The
5 divorce doesn't go through until early 2015, correct?

6 A That's correct.

7 Q And there were proceedings and things like
8 that happening and lawyers and that kind of stuff?

9 A Yeah.

10 Q All right. During all of that time, was
11 there any discussion between you and Ms. Vance or you
12 and an attorney representing Ms. Vance about these
13 videos?

14 MS. ATWOOD: Objection, Your Honor. His
15 discussions with the victim's attorney, if any, would
16 be hearsay.

17 THE COURT: Sustained.

18 BY MR. TAYLOR:

19 Q Did anyone ever tell you -- or did
20 anyone --

21 MS. ATWOOD: Objection, Your Honor.

22 THE COURT: Sustained. You may finish
23 your question, Mr. Taylor.

24 BY MR. TAYLOR:

25 Q My question is: During the divorce, was

1 there any discussion, to your knowledge, about these
2 videos?

3 MS. ATWOOD: I'll object one more time.
4 Without knowing the participants of the discussion, I
5 don't believe we can rule out that this would be a
6 hearsay statement.

7 MR. TAYLOR: Judge, I'm asking for --
8 for its effect on the listener.

9 THE COURT: Okay. You may answer the
10 question, sir.

11 THE WITNESS: There was never any
12 discussion during or before the divorce about any
13 sort of videos or any discussions about what -- what
14 happened to them.

15 BY MR. TAYLOR:

16 Q All right. After you guys split up --
17 well, let me follow up on that at some point. So at
18 any point prior to, let's say, June of 2016, has
19 Ms. Vance come to you and said, "Don't share these
20 videos," or anything like that?

21 A No.

22 Q Has she mentioned them at all to you in the
23 last four years?

24 A There was one time when we had a discussion
25 about that in July of 2015 when I informed her

1 that --

2 Q We'll get to that in a few Mr. Barber.

3 I guess, aside from that conversation, any other
4 discussion about the videos?

5 A No.

6 Q She ever express to you any concerns about
7 keeping them under lock and key or destroying them or
8 anything like that?

9 A No.

10 Q All right. After you guys get divorced, so
11 we're talking early 2015, where were you living?

12 A What -- at what point, again?

13 Q Early 2015.

14 A Oh, I was living in my house at 2030 --
15 2637 Southwest Water Avenue, Portland, Oregon 97201.

16 Q All right. Were you working at that time?

17 A Yes.

18 Q All right. So let's talk about 2015 and
19 that year, all right?

20 A Okay.

21 Q Let's start with this. Big picture, how
22 did 2015 go for you? Did it go well or did it go
23 poorly?

24 A In early 2015, I had a new relationship and
25 a new job working for a financial services company.

1 In February of 2015, Ms. Vance decided that she had
2 wanted to get back with me before the divorce had
3 finalized.

4 And so I had told the woman that I had been
5 seeing and had been living with me that she would
6 have to -- have three days to move out and that me
7 and my ex-wife would -- were going to be getting back
8 together. And then she decided that she had changed
9 her mind sometime afterwards.

10 MS. ATWOOD: Your Honor, I'm going to
11 object to his testimony about her changing her mind
12 about anything.

13 THE COURT: Sustained.

14 BY MR. TAYLOR:

15 Q Did you end up getting back together with
16 Ms. Vance at any point?

17 A After the --

18 Q On a -- on a long-term --

19 A After the divorce, we did have some sexual
20 relations in July of 2015.

21 Q All right. So going back to sort of what I
22 was initially asking about, regarding your living
23 situation, your work, how did 2015 go for you?

24 A Somebody had contacted my workplace to say
25 that I had committed some theft and fraud and then

1 there was a --

2 MS. ATWOOD: Objection, Your Honor.

3 This is hearsay.

4 THE COURT: Please direct your client to
5 answer the question, okay?

6 MR. TAYLOR: I will.

7 THE COURT: Thank you.

8 BY MR. TAYLOR:

9 Q Mr. Barber, if you could just focus on some
10 big-picture principles with me right now.

11 A Okay.

12 Q Did 2015 go well for you or poorly for you?

13 A Poorly for me.

14 Q All right. Were you employed throughout
15 2015?

16 A I was employed initially.

17 Q All right. Did you end up losing a job?

18 A Yes, I did.

19 Q Were you able to regain employment?

20 A No.

21 Q All right. How long were you without
22 employment in 2015?

23 A For, I would say, seven months.

24 Q And is that the later part of 2015?

25 A That is correct.

1 Q All right. How about your housing
2 situation? Were you housed in 2015 continuously?

3 A No.

4 Q Did you lose housing at some point?

5 A Yes.

6 Q Were you able to regain housing?

7 A No.

8 Q So where were you living?

9 A I was living on the rooftop of an
10 industrial warehouse.

11 Q All right. So overall, towards the end of
12 2015, how were you feeling about your life?

13 A I was awfully depressed because I wasn't
14 able to afford the basic necessities of life.

15 Q All right. Were you upset, in particular,
16 at Ms. Vance or just generally upset?

17 A I was generally upset because I was trying
18 to apply for lots of jobs and I was trying to -- to
19 basically get into a place to live, but I was not
20 able to and take care of my basic needs.

21 Q All right. And so how did that make you
22 feel about things?

23 A Well, in the beginning of January, there
24 was an ice storm and I was living on top of this
25 warehouse and freezing to death and I was

1 contemplating killing myself and lighting myself on
2 fire to sort of -- so that -- so people know that
3 there's -- I was being picked on, I guess and that I
4 was going through some tough time.

5 It's like the -- there's, like, this
6 Buddhist monk in Vietnam that I have some good
7 feelings for who protested in the form of lighting
8 himself on fire.

9 Q All right. So you felt at that time -- and
10 I'm just summarizing what I understand you to be
11 saying, is that sort of the world was out to get you
12 and nothing good was happening in your life?

13 A Yeah.

14 Q All right. Did you try to get any help for
15 your mental health situation?

16 A Yeah, I went to Oregon Health Sciences
17 University.

18 Q And when you went there, what was the
19 reason you wanted to go there?

20 A Because my sister and brother had told me
21 that they had some previous experiences and I would
22 be able to get through it. And my brother related
23 some experiences of Iraq and that he had --

24 MS. ATWOOD: Objection, Your Honor.

25 THE WITNESS: -- been able to pull

1 through it.

2 MS. ATWOOD: Hearsay.

3 MR. TAYLOR: Effect on the listener,
4 Judge.

5 THE COURT: Overruled.

6 MR. TAYLOR: But I will move on.

7 BY MR. TAYLOR:

8 Q I guess, let me put it like this,
9 Mr. Barber. When you walked into OHSU in January,
10 what did you tell them the reason for your visit was?

11 A That I was thinking about killing myself.

12 Q And were you, in fact, doing that?

13 A Yeah.

14 Q All right. So did things improve after
15 that?

16 A Not for another six months.

17 Q All right. And we'll get to that in a few.
18 Did you work with any other organizations to try and
19 get help, things like that?

20 A Yeah, Cascadia Behavioral Healthcare.

21 Q All right. Overall, did that help?

22 A I mean, it's really like they're -- they
23 don't actually have any ability to help you with your
24 material circumstances. All they can do is just
25 listen to you talk at them.

1 Q All right. So I want to turn back to a
2 couple of specific things in 2015, particularly the
3 July 2015 conversation with Ms. Vance you mentioned
4 earlier.

5 A Yeah.

6 Q Who initiated that conversation?

7 A She had.

8 Q All right. And in what form did that
9 conversation take? Was it in person, over e-mail?

10 A It was in text message.

11 Q All right. I want to direct you to a -- a
12 specific part of that conversation. Were you aware
13 at that time that there was something going on with
14 the pornography in question in this case?

15 A Yeah. I had been informed by an individual
16 by the pseudonym of (indiscernible) that the porn was
17 being put on the internet.

18 Q All right. So you had heard that, somehow,
19 this porn was getting out?

20 A Yeah.

21 Q Were you aware of where that pornography
22 was?

23 A I mean, I know where it had been previous
24 to this, yeah. It had been on my cloud server.

25 Q All right. Had you shared it with anyone

1 at that point?

2 A I mean --

3 Q Recently?

4 A Not recently, no.

5 Q All right. Had you even thought about
6 it lately?

7 A No.

8 Q All right. Did you talk to Ms. Vance in
9 that conversation about what you had heard?

10 A Yeah.

11 Q What -- do you recall what you said?

12 A I said, "Are you aware that some of your
13 friends have been spreading our porn on the
14 internet?"

15 Q And how did she respond?

16 A She said, "Yeah, I heard something
17 about that."

18 Q What was your impression of that response?
19 Like, what did that response say to you?

20 A That she really wasn't too concerned about
21 it. I mean, neither -- I wasn't too concerned about
22 it because we had both been in public naked and I
23 didn't really have any shame and it really didn't
24 affect my material circumstances in life.

25 Q So Ms. Vance told us a story yesterday that

1 there was this big back story that she was aware of
2 this attempts to access the pornography and she may
3 have been involved in it to some extent. Did you
4 know anything about that?

5 A No. I didn't know anything about her being
6 involved with that.

7 Q All right. And speaking of Ms. Vance, when
8 was the last time, I guess, prior to the last day or
9 two, that you even saw Ms. Vance in person?

10 A In April of 2016, she came by to get a pair
11 of boots, a tea kettle and maybe, like, a potted
12 house plant.

13 Q Prior to that, when was the last time you
14 saw her?

15 A I delivered most of all of her things to
16 her house in Southeast Portland.

17 Q And do you remember when about that was?

18 A That was in December of 2014.

19 Q All right. Let's turn back to the
20 discussion we were having about late 2015 and how
21 things were not going well for you, all right?

22 A Mm-hmm.

23 Q Did you communicate with Ms. Vance during
24 that time?

25 A In late 2015, yeah.

1 Q All right. And were your communications
2 with Ms. Vance more or less accurately summarized in
3 the exhibits the State offered yesterday, those text
4 messages and things like that?

5 A Yeah. That would be an accurate reflection
6 of the messages, yeah.

7 Q All right. And then moving into 2016, how
8 about the e-mails the State introduced? Did you send
9 those e-mails?

10 A Yes.

11 Q Does that all sound about accurate?

12 A That is about accurate.

13 Q All right. How did you feel about
14 Ms. Vance during that time period, the -- late 2015
15 to early 2016?

16 A Well, I mean, she was the -- the only
17 person who really understood me because I don't
18 really have many friends left anymore and I stopped
19 talking to a lot of them because I didn't feel like
20 it was appropriate to burden them with my problems.
21 And she was someone who kind of knew me.

22 And I, basically, just kind of stick to
23 only a few people and try to focus on work and stuff.
24 And so I felt like she would have an understanding of
25 how I feel. And so I wanted to just have the person

1 who I had, like -- a lot of -- a lot of my goals and
2 aspirations are tied to her, like wanting to help
3 the -- the blind.

4 And I discovered, when I was trying to find
5 a cure for albinism, a way to genetically engineer
6 plants to use melanin for photosynthesis and so a lot
7 of my personal --

8 MS. ATWOOD: Your Honor, I'm not seeing
9 the relevance of this testimony. I don't --

10 THE WITNESS: Sorry.

11 MS. ATWOOD: -- remember what the
12 question was.

13 THE WITNESS: Yeah, I forgot what the
14 question was, too. I'm sorry.

15 BY MR. TAYLOR:

16 Q The question related to my client's
17 feelings towards Ms. Vance during late 2015 to early
18 2016.

19 A I mean, I love her. I have a lot of -- a
20 lot of who I am is tied up in her and a lot of my
21 goals were tied up in things I had experienced
22 with her.

23 Q Were you angry at Ms. Vance around this
24 time?

25 A No, I was lonely.

1 Q Did you want to get back together with her?

2 A I mean -- sorry. I mean, we had a -- an
3 understanding of what the social contract that she
4 had -- had been in a relationship, so I couldn't be
5 with her. But I wanted to be at least pen pals or
6 have someone to lay my emotional burdens on because I
7 didn't feel like it was -- I had anyone else to -- to
8 talk to.

9 Q So let's kind of move forward in time. We
10 heard some testimony that in April of 2015, some of
11 these videos were uploaded to some websites. To be
12 clear, did you upload these videos to any websites?

13 A Yeah.

14 Q What websites did you upload these videos
15 to?

16 A I had uploaded them to Pornhub and to
17 xHamster and I uploaded them to Porn.com.

18 Q All right. Why did you upload these videos
19 to those websites?

20 A 'Cause I didn't have any money at the time
21 and I was thinking about killing myself, so I don't
22 really have any way to keep anything that I have
23 around.

24 I put all my source code, which is the
25 computer programs that I make, on websites like

1 GitHub and GitLab so that other people can reuse the
2 work that I did, like shortcuts if they wanted to do
3 their own work.

4 And I put all of the rest of my photo
5 collection on Facebook and I was basically trying to
6 find some way that there'd be some record of me in
7 this world after I killed myself because I had wanted
8 to -- thought about a couple of times walking into
9 traffic or jumping over one of the bypasses.

10 Q When you put these videos online, were you
11 thinking about Ms. Vance in particular?

12 A No. I was thinking about what I had
13 left over.

14 Q All right. Did you upload them intending
15 to cause her harm or embarrassment or anything like
16 that?

17 A No. I hadn't tried to harm her in any way.

18 Q Okay. Let me ask you a specific question
19 about one of those websites.

20 A Yeah.

21 Q We heard testimony from Ms. Vance yesterday
22 that on xHamster, her name was associated with the
23 posting. Do you recall hearing that testimony?

24 A I heard that testimony, yeah.

25 Q Do you recall at any point putting

1 Ms. Vance's name on the xHamster videos?

2 A No, I do not.

3 Q Around the time that you put these videos
4 online, did you put -- or did you send them to anyone
5 in particular?

6 A I didn't send them to anyone at all.

7 Q Did you put them on any sort of, like,
8 social media sites or anything like that?

9 A No.

10 Q Did you send links to any of these postings
11 you made to any of her friends or family or employer
12 or anything like that?

13 A I didn't send anyone any of the links to
14 any of those photos.

15 Q So that was April of this year, correct?

16 A Yeah.

17 Q All right. You are obviously still here.
18 What changed in your life?

19 A I had been able to get a job at Intel
20 through some networking and trying to talk to people
21 who were currently at Intel. And I had been offered
22 a -- basically, the job I'd always wanted to do,
23 which was to work on computation of genetics
24 professionally.

25 Q All right. Did you accept that job?

1 A Yeah.

2 Q How'd that make you feel?

3 A It felt like I was going to be able to
4 change the world 'cause I was working on cancer
5 genomes and I thought I'd be able to genetically
6 engineer plants to stop global warming.

7 Q All right. So the stuff you always wanted
8 to do?

9 A Yeah.

10 Q All right. Did that change your mood and
11 attitude about life?

12 A Yeah. I basically worked all day, every
13 day nonstop because I really loved that kind of work.

14 Q How much were you working?

15 A Literally any waking moment I could.

16 Q I mean, how many hours a day are we
17 talking?

18 A Like, sleeping every other day ten hours
19 and the rest of time would be working. So, like, 34
20 hours and then ten hours sleeping.

21 Q So you were busy?

22 A Yeah.

23 Q So this work took you out of your
24 depression, despair that you'd been in?

25 A Yeah.

1 Q Were you eventually able to find housing
2 as well?

3 A Yeah.

4 Q All right. So your life improved?

5 A Yeah.

6 Q And you're happy about that?

7 A Yeah.

8 Q All right. And with all this work you're
9 doing and things you had going on in your life, did
10 you think about these videos?

11 A No.

12 Q And did you forget about them?

13 A I mean, I didn't forget about it. Just --
14 it doesn't cross my consciousness, so my
15 consciousness filled with other things.

16 Q All right. So just kind of in the back of
17 your mind, not really thinking about it?

18 A Yeah.

19 Q All right. So when was the next time you
20 heard anything about these videos?

21 A I heard about them when I got a text
22 message from Ms. Vance.

23 Q And were those the text messages that she
24 discussed yesterday?

25 A Yeah, that's correct.

1 Q So she texted you, says she needs to talk?

2 A Yeah. And I asked her if it was an
3 emergency.

4 Q All right. Did you know why she was
5 texting you?

6 A Not initially.

7 Q All right. Did you eventually figure it
8 out?

9 A Yeah, she asked me about the videos.

10 Q All right. Was that in that same
11 conversation?

12 A That was that -- the same conversation,
13 yeah.

14 Q So what went through your mind then?

15 A That I'm not going to porn websites at
16 work.

17 Q Were you at work when you received these
18 text messages?

19 A Yeah.

20 Q All right. So how did you react after
21 that?

22 A I was assuming that she was upset about the
23 videos and I would get to talk to her about it when I
24 had some time off on a Saturday.

25 Q All right. Did you, at any point in June,

1 have any conversation with Ms. Vance?

2 A You -- in June? The -- you mean the
3 conversation over text message?

4 Q Aside from that, did you have any other
5 conversations with Ms. Vance?

6 A Oh, I -- I told her in June that I had
7 gotten this job where I was working with a bunch of
8 Ph.D.s on cancer research.

9 Q Pardon me. My question was poor form.
10 After the text messages about the videos --

11 A Oh, after -- after the text messages.

12 Q -- did you have any more discussion back
13 and forth with Ms. Vance?

14 A Yeah. I told her that I would take down
15 the videos and that if she wanted to, I would give
16 her my entire paycheck and every other paycheck as
17 long as I could keep my job.

18 Q And, again, are those communications that
19 you're discussing accurately reflected in those
20 exhibits the State previously offered?

21 A Yeah, that's correct.

22 Q Those are the, "Please don't ruin my life.
23 I'll do whatever you want"?

24 A Yeah.

25 Q All right. When was the first time you

1 heard that the police were involved in this case?

2 A After I got a voicemail Saturday afternoon
3 from Thomas Duenas.

4 Q Did you know exactly what he was
5 talking about?

6 A Well, I mean, he left me a voicemail saying
7 that he needed to talk to me about the pornographic
8 films, yeah.

9 Q So his -- his voicemail explained what he
10 was calling about?

11 A Yeah.

12 Q Did you know at that time that this was a
13 criminal matter?

14 A No, I did not know that.

15 Q What'd you think?

16 A I thought it was, like, a civil matter,
17 like she claimed that she owned the videos and a --
18 and a DMCA request and that would mean it's a civil
19 thing. And that I -- she may have -- I thought at
20 the time she may have accused me of something else.

21 And so I -- I told him I didn't threaten
22 her with it, did not send it to anyone. I wasn't
23 trying to blackmail or extort her. And so I said,
24 you know, "Why is this anything to do with criminal?"
25 You know, "I own these. These are mine."

1 Q And you're now talking about the actual
2 discussion that you had with Deputy Duenas; is
3 that correct?

4 A Yeah.

5 Q And that was a discussion over the phone,
6 right?

7 A Yeah.

8 Q On about June 26th?

9 A Yeah.

10 Q All right. And you heard Deputy Duenas
11 talk about his recollection of that conversation
12 yesterday, correct?

13 A Yeah.

14 Q In your opinion, did he accurately
15 characterize the things that you said?

16 MS. ATWOOD: Objection, Your Honor.
17 Can't speak to the --

18 THE COURT: Sustained.

19 MS. ATWOOD: -- testimony of the
20 witness.

21 BY MR. TAYLOR:

22 Q What do you recall telling him in that
23 conversation?

24 A I recall telling him that there was a long
25 history of false complaints that were -- had been

1 lodged against me in the past and I iterated through
2 examples of those and then I asked him if I'm being,
3 you know, complained about, "Why isn't -- did she
4 tell you that her friends had engaged in the same
5 pattern of behavior when they tried to also release
6 the same exact videos?"

7 Q So you were kind of trying to tell him the
8 whole back story?

9 A Yeah. I had said, you know, "I've been
10 accused of Fraud and I've been accused of Theft and
11 I've been accused of all these other things
12 repeatedly in an attempt to hurt me." And I included
13 the -- the rape allegation, which is the only one
14 that he included in that report.

15 Q All right. Did you talk to him about why
16 you uploaded these videos?

17 A Yeah.

18 Q What did you tell him about why you
19 uploaded the videos?

20 A That I was in such a state of depression
21 that I was going to kill myself when I uploaded them.

22 Q All right.

23 A I mentioned that the -- the reason why I
24 had been homeless was because my workplace had -- I
25 had not being able to keep a stable job with my

1 workplace being barraged with complaints of Theft and
2 Fraud and my professional life being ruined with
3 these sort of false accusations.

4 Q So, again, you kind of just gave him the
5 whole story?

6 A Yeah.

7 Q All right. I've lost my place. Give me
8 one moment. Did Ms. Vance ever ask you to remove the
9 videos from the websites?

10 A I had gotten a DMCA request, but it didn't
11 say who it was from. It said that these have been
12 flagged, that, "You are not the copyright holder. If
13 you disagree, send us a statement underneath a
14 district court that you are the owner of the videos
15 and that this is an error."

16 Q All right. Did you end up removing any of
17 the videos in response to that?

18 A I sent a -- what's called a counter notice
19 with -- rights, that I am the owner of these videos.
20 These -- this -- this notice has been placed as an
21 error. I'm the owner.

22 Q All right. Returning to your involvement
23 with Deputy Duenas, timeline seems to be that June
24 26th, you guys talked on the phone and then July
25 17th, you eventually turned yourself into him at the

1 East Precinct, correct?

2 A Yeah.

3 Q In the time between those, did you have any
4 other interactions with Deputy Duenas?

5 A I sent him a bunch of links which
6 corroborated the oral testimony that I gave him
7 because I like to be meticulous and detail oriented.

8 So I sent him all of the examples of false
9 accusations that had been lodged previously, the
10 conversation where the videos had been originally
11 uploaded to my private cloud server and the
12 conversation between the four of us.

13 And I also had included the people who had
14 tried to upload the videos in an attempt to blackmail
15 me. And I had sent that, including highlighted
16 sections that -- so he wouldn't have to read through
17 the entire thing. He could just click, you know, and
18 get to the highlighted portion that was relevant.

19 Q So you sent him a giant e-mail trying to
20 explain your side of the story; is that correct?

21 A Yeah, that's right.

22 Q All right. Did he respond to that?

23 A He did not respond to that. He responded
24 to another one where I asked him about our meeting
25 time and he said that he had something going on on

1 one day, so he had to reschedule for the next day
2 afterwards. I think he had some sort of training to
3 deal with. And so he rescheduled for two days
4 afterwards.

5 Q Okay. So this conversation was about how
6 you guys were going to proceed, but no conversations
7 about the substance of the things that you had sent
8 him?

9 A I mean, I asked him if he had gotten it and
10 I said I'm -- "I know that you have kind of, like,
11 you know, a bunch of things to do. Here's a list of
12 all the stuff I cited."

13 Q All right. So you eventually turned
14 yourself in to him on July 17th, correct?

15 A Yeah.

16 Q All right. How'd you feel when you went in
17 that day?

18 A I was afraid that I was going to basically
19 become homeless and jobless again.

20 Q All right. Were you upset?

21 A Yeah.

22 Q All right. Did you tell Deputy Duenas more
23 things related to this case on July 17th?

24 A I -- I -- when I turned myself in, I asked
25 him if he had gotten my e-mail that I had sent him

1 previously. You know, I basically reiterated what
2 they -- what the topics of the e-mails were about,
3 essentially, and, you know, previous incidences of a
4 restraining order, how this was going on while there
5 was a restraining order. He --

6 MS. ATWOOD: Objection, Your Honor.
7 Relevance.

8 THE COURT: Sustained. And be stricken.
9 BY MR. TAYLOR:

10 Q Did you have a discussion with him, just in
11 general, about, again, telling your side of the
12 story?

13 A Yeah.

14 Q All right. So, Mr. Barber, I guess, let me
15 just wrap up with a few pretty simple questions,
16 okay? Did you put those videos on websites?

17 A Yeah.

18 Q Which websites did you put the videos on?

19 A I put them on xHamster, Pornhub and
20 Porn.com.

21 Q Did you put them on any other websites?

22 A No.

23 Q Were you aware that they were getting put
24 on any other websites?

25 A No.

1 Q Why did you put those videos on those
2 websites?

3 A Because I was going to kill myself and I
4 had no one that really cares, no impact I'd left on
5 the world and it'll be known that anyone knows
6 existed after I'm dead.

7 Q Did you put them up there to hurt
8 Ms. Vance?

9 A No, I didn't tell anyone. I didn't ask her
10 for any money. I just basically put them up there
11 and pretty much just disappeared from the world. I
12 wasn't talking to anybody.

13 Q So were you trying to get revenge on her?

14 A No.

15 MR. TAYLOR: All right. Those are all
16 my questions. Thank you.

17 THE COURT: Thank you, Mr. Taylor.

18 Ms. Atwood, did you wish to --

19 MS. ATWOOD: I actually have a couple of
20 matters for the Court --

21 THE COURT: Okay.

22 MS. ATWOOD: -- if that's okay.

23 THE COURT: All right. So we'll go
24 ahead and take a short break and then hopefully deal
25 with this quickly and then we'll bring you back out

1 for a couple -- maybe another 20 minutes or so.

2 Thank you.

3 (The following proceedings were held in
4 open court, out of the presence of the jury,
5 11:48 a.m.)

6 MS. ATWOOD: So, Judge, I want to
7 revisit a couple of pieces of evidence we discussed
8 before trial began, first, being the cease-and-desist
9 notice that the defendant was given in the spring of
10 2015 regarding not having any contact with the victim
11 and her beliefs that he was harassing and threatening
12 her in many ways and that he had posted Ms. Vance's
13 personal information online in order to further
14 harass and intimidate her.

15 His testimony specifically was -- and I
16 wrote this down -- that in the spring of 2015, the
17 victim was attempting to reconcile with him and he
18 didn't have any idea at that point in time that she
19 would have felt -- that she gave him any idea that he
20 could not disseminate any sort of video, audio/visual
21 images that they had created during the course of
22 their relationship.

23 And I think this is -- directly speaks
24 to his knowledge that he was not suppose to be
25 disseminating information about her on the internet

1 at that point in time.

2 The second piece of evidence obviously
3 being the prior Craigslist post where the defendant
4 states that he had put forth so much time and energy
5 dealing with the victim's PTSD, depression, anxiety,
6 that he was done with her and soliciting sex on his
7 own to other people and in the time that he was doing
8 that, doing so with photos of them having sex, in
9 addition to a photo of a mug shot that he had pulled
10 from the internet of her.

11 His testimony being that he did not have
12 any intent whatsoever to harm her by disseminating
13 explicit images of her on the internet is completely
14 contradicted by the evidence that he had clearly done
15 so in the past with a malicious intent.

16 THE COURT: Mr. Taylor.

17 MR. TAYLOR: So, Judge, I guess I'll
18 take them one at a time. The PSU letter, I think
19 Ms. Atwood can cross my client and ask him questions
20 about Ms. Vance's statements. And if -- I think
21 he -- she could also ask the question, you know, "Did
22 a lawyer tell you not to do that?"

23 I don't think she gets to enter the
24 exhibit. I don't think she can authenticate it and
25 we don't have the lawyer here, which is what

1 Your Honor mentioned yesterday when we discussed it.
2 So that's kind of where I come down on that issue.

3 As far as the Craigslist post, that
4 Craigslist post appears to be from 2013. I think
5 Mr. Barber's testimony was pretty clear and I tried
6 to keep it pretty concise on this matter, is -- and
7 it was that they had an ugly divorce. There was
8 animosity back and forth between both parties.

9 Mr. Barber didn't contradict that in any
10 way. That's been the sort of theme and understanding
11 of this trial, is that from 2013 to early 2015, this
12 nasty divorce was happening.

13 So I don't know how a Craigslist post
14 from 2013 particularly plays into the intent issue
15 that is relevant, which is the intent in early 2016.
16 It's a three-year difference. There are clearly a
17 substantial number of events that happened during
18 that time.

19 But furthermore, I think -- I think
20 there's some concerns with entering that exhibit as
21 far as opening up doors to more questions and sort of
22 getting deeper into relitigating this divorce and
23 everything that happened there, which we have
24 attempted to truncate away from this trial. So
25 that's where I come down on that issue, Judge.

1 THE COURT: Okay.

2 MS. ATWOOD: Can I add, Your Honor?

3 THE COURT: Mm-hmm.

4 MS. ATWOOD: Just a couple of things.

5 As far as the defendant's testimony about their
6 marriage and the things that went on during their
7 marriage, I disagree with defense counsel that it was
8 limited to purely testimony that this was a rough
9 time in that it was -- and, you know, there was
10 animosity throughout the relationship.

11 He did testify that through -- from the
12 move-in in 2013 to the divorce, their relationship
13 was stressful, that he was the one trying to make
14 efforts to make it work to no avail, that the victim
15 had animosity toward him and was trying to harm him,
16 that she was the escalator and that he wanted to --
17 nothing but to reconcile, essentially.

18 This obviously directly contradicts that
19 testimony as well. So I -- I think it's
20 independently relevant on multiple grounds.

21 THE COURT: Okay. So as far as the
22 letter from the attorney, you are welcome to inquire
23 about that.

24 Again, I've already made a ruling that
25 unless you bring that witness in or have somebody

1 with personal knowledge of the creation of that, it's
2 not coming in as an exhibit. However, I do believe
3 that he's opened the door to the 2013 post, so that
4 will come in.

5 MR. TAYLOR: Judge, can I address one
6 issue related to that?

7 THE COURT: Yes.

8 MR. TAYLOR: So as you know, that post
9 is titled, "wife arrested for DV last night," and
10 includes a mug shot. So Ms. Atwood is obviously
11 going to be offering that. That's her choice to do.

12 I -- I -- the fact of the matter is both
13 parties had arrests for Harassment in 2013 and prior
14 to the divorce proceedings beginning. Furthermore,
15 both took out restraining orders on each other
16 throughout this time.

17 And what I want to be clear on is that
18 my position is that if Ms. Atwood wants to ask
19 questions about that and bring that in, I understand
20 the Court's ruling. However, I don't believe that at
21 all opens the door for her to pursue any line of
22 questioning with regard to my client about his arrest
23 for Harassment.

24 I don't think he's invited that in any
25 way. We've been very careful to keep any mention of

1 I don't want to, I guess, constrict myself in my
2 opportunity --

3 THE COURT: Sure.

4 MS. ATWOOD: -- to cross him.

5 THE COURT: Okay. So probably what
6 we'll do is when we bring them back, we'll just break
7 for lunch then.

8 MS. ATWOOD: That's fine.

9 THE COURT: Okay.

10 MR. TAYLOR: Thank you, Judge.

11 THE COURT: You're welcome. And
12 we're -- Mr. Taylor, we're just going to break for
13 lunch.

14 MR. TAYLOR: Oh, okay. Sorry.

15 THE COURT: That's all right. Do you --
16 Ms. Helregel?

17 MR. TAYLOR: I'll let her know whenever
18 she pops back up.

19 THE COURT: Okay. So let's go ahead and
20 bring them in.

21 Do you -- do you want us to wait for her
22 to return? She might have --

23 MR. TAYLOR: No, we're good.

24 THE COURT: Are you sure?

25 MR. TAYLOR: Yes.

1 THE COURT: Okay.

2 (Whispered discussion, off the record,
3 11:55 a.m. - 11:56 a.m.)

4 (The following proceedings were held in
5 open court, the jury being present, 11:56 a.m.)

6 THE COURT: All right. So at this time,
7 we're going to go ahead and take our lunch break.
8 Thank you for coming back.

9 And if you -- everyone can be back here
10 at 1:30 in the jury room, we'll get started as soon
11 as everybody's back and hopefully get going right
12 away, okay? All right. Thank you. Again, remember
13 to wear your -- your badges when you're out and about
14 and not to discuss the case. Thank you.

15 Mr. Barber, you can step down. Thank
16 you.

17 * * *

18 (Noon Recess taken at 11:57 a.m.)
19

20 ***AFTERNOON SESSION***

21 (Whereupon, the following proceedings
22 were held in open court, out of the presence of the
23 jury, 1:39 p.m.)

24 THE COURT: All right. So you should
25 have drafts of the jury instructions.

1 MS. ATWOOD: I only have the verdict
2 form.

3 THE COURT: Okay. Did you -- do you
4 have the jury instructions, Mr. Taylor?

5 MR. TAYLOR: I got a copy, yes, Judge.

6 THE COURT: Of the jury instructions?

7 MR. TAYLOR: Yes, shall we pool
8 together?

9 MS. ATWOOD: Yes.

10 (Whispered discussion, off the record,
11 1:39 p.m.)

12 MR. TAYLOR: And, Judge, I guess a quick
13 question, is this copied and pasted from the State's
14 requested instruction, the Unlawful Dissemination
15 one?

16 THE COURT: Yes. And if you look, I
17 just changed it as you requested with putting --

18 MS. ATWOOD: The names?

19 THE COURT: -- the names in. And then,
20 obviously, on criminal charge, if you'll look on Page
21 3, I'll have to change that. And then I've
22 highlighted non-expert opinion evidence. I'm not
23 sure that you're still requesting that --

24 MS. ATWOOD: (Indiscernible) that's --

25 THE COURT: -- or what that's being

1 requested.

2 MR. TAYLOR: And allow me to reread that
3 instruction --

4 THE COURT: Sure.

5 MR. TAYLOR: -- to refresh my own
6 recollection. So I would continue to request that
7 instruction, Judge. I think it goes to the issue --
8 the detective made several comments about the issue
9 of mirroring websites and things like that.

10 And then when we followed up on it, he
11 was just kind of like, "That's what it leads me to
12 believe," when he was discussing the -- the view
13 numbers and things like that. And I think I plan to
14 hit on that in my closing argument some.

15 MS. ATWOOD: I just don't recall him
16 ever actually stating, "It was my opinion that X, Y,
17 or Z." He was just relaying what was consistent to
18 him based his experience.

19 THE COURT: No, I think he did make
20 some --

21 MS. ATWOOD: He did?

22 THE COURT: Yeah.

23 MS. ATWOOD: Okay.

24 MR. TAYLOR: In the form of, "That leads
25 me to believe this, that thing." He said things like

1 that.

2 THE COURT: Yes.

3 MR. TAYLOR: And, Judge, I think at this
4 point, I would also like to request the instruction
5 on voluntary act.

6 THE COURT: What number is that?

7 MR. TAYLOR: Oh.

8 (Pause in proceedings, 1:41 p.m.)

9 MR. TAYLOR: It's in the first section I
10 know that, up towards the very end. That would be
11 10.65, Judge.

12 THE COURT: Thank you. Let me look at
13 that.

14 And, Ms. Atwood, have you looked at
15 voluntary act?

16 MS. ATWOOD: No, can I take a look at
17 that? Do you have it (indiscernible)?

18 MR. TAYLOR: I've got the number.

19 MS. ATWOOD: I can look it up really
20 quick.

21 (Pause in proceedings, 1:42 p.m. -
22 1:43 p.m.)

23 MR. TAYLOR: Does the Court have a copy?

24 THE COURT: Uh-huh. I'm not inclined to
25 give it in it's entirety.

1 Ms. Atwood --

2 MS. ATWOOD: My computer is being a bit
3 slow. Could you read it to me? I don't -- I
4 don't -- can't recall it off the top of my head.

5 THE COURT: Okay. So it says, "For
6 criminal liability, Oregon law requires the
7 performance of a voluntary act or omission. Act is
8 defined bodily movement. Voluntary act is a bodily
9 movement performed consciously. Omission is a
10 failure to perform an act, the performance of which
11 is required by law.

12 "Conduct and act or omission and it's
13 accompanying mental state. To act, either to perform
14 an act or omit such acts." And C6, "Culpable mental
15 state means intentional knowing, reckless and with
16 criminal negligence."

17 MS. ATWOOD: So what portions would you
18 want to --

19 MR. TAYLOR: I don't need the portions
20 about culpable mental state and I don't need the
21 portions about omissions. I'm mainly asking for the
22 several sentences in the beginning about voluntary
23 actions.

24 MS. ATWOOD: And, Your Honor, I think
25 that the mental states outlined in the elements of

1 the crime are sufficient to get the point across.

2 THE COURT: Yeah. I don't think that
3 this is an appropriate instruction for this case and
4 so I will decline to give it. You're welcome to make
5 your exceptions.

6 MR. TAYLOR: I will make an exception.
7 That's all. Thank you, Judge.

8 THE COURT: Thank you.
9 And did you have a chance to look at the
10 verdict form?

11 MS. ATWOOD: Yes, Judge. The only
12 other -- well, hold on.

13 (Pause in proceedings, 1:44 p.m. - 1:45
14 p.m.)

15 MS. ATWOOD: Judge, I think these look
16 fine to me. I didn't see anything in the
17 instructions that I would ask to have changed.

18 MR. TAYLOR: And nothing else from me at
19 this time, Judge.

20 THE COURT: Okay. And just if you look
21 at the definitions on Page 4.

22 MS. ATWOOD: Mm-hmm.

23 THE COURT: I am going to make a few
24 changes there. "Intimate parts," I'm going to get
25 rid of the dashes. And it's actually "mean." not

1 "means." And then "sexual intercourse," get rid of
2 the dash and put "means." And "deviate sexual
3 intercourse," get rid of the dash and put "means."

4 MR. TAYLOR: I -- do we even need
5 deviate sexual intercourse?

6 THE COURT: I don't think we do, but if
7 you look at "sexual conduct" it says, "Sexual
8 intercourse or deviate sexual intercourse or
9 masturbation."

10 MS. ATWOOD: Right.

11 THE COURT: So.

12 MS. ATWOOD: And, I mean, by the
13 definition, some of these videos would include one --

14 THE COURT: Deviate sexual intercourse.

15 MS. ATWOOD: -- and the other or the
16 other, so --

17 MR. TAYLOR: That's fine.

18 THE COURT: All right. So is everybody
19 ready to resume?

20 MS. ATWOOD: My question is: Do you
21 expect us to just -- to not take any further breaks
22 between and the end of closing?

23 THE COURT: Well, that would be my hope,
24 but I'm sure it's not going to happen.

25 MS. ATWOOD: Okay. I just didn't know.

1 I could go ahead and set this up now and make sure
2 that's all good to go. Should I -- should I do that
3 now? Okay.

4 THE COURT: That'd be great. Do you
5 intend to call rebuttal?

6 MS. ATWOOD: Yes, just very brief.

7 THE COURT: Okay. And, Mr. Taylor, will
8 you be ready to go once State's done with their
9 rebuttal?

10 MR. TAYLOR: Always.

11 THE COURT: Okay.

12 (Pause in proceedings, 1:45 p.m. -
13 1:47 p.m.)

14 MS. ATWOOD: Do you know if -- does this
15 podium usually block it? Should I move this then?

16 THE CLERK: (Indiscernible) we can
17 move it.

18 THE COURT: Just standing to stretch,
19 Mr. Taylor?

20 MR. TAYLOR: Yep --

21 THE COURT: Okay.

22 MR. TAYLOR: -- as usual, Judge.

23 THE COURT: Just checking.

24 MR. TAYLOR: I'm -- I'm winding up for a
25 new surgery in a month or so.

1 THE COURT: Oh.

2 MS. ATWOOD: Yikes.

3 MR. TAYLOR: Yep.

4 DEFENDANT BARBER: Are you too tall?

5 MR. TAYLOR: Yep.

6 (Pause in proceedings, 1:48 a.m.)

7 DEFENDANT BARBER: Can I look at the
8 jury instructions, please?

9 MR. TAYLOR: Yeah.

10 DEFENDANT BARBER: Your Honor, can I
11 make a remark for a moment? (Indiscernible) can I
12 write it down or do you want me to tell it to you or
13 what?

14 (Whispered discussion, off the record,
15 1:48 p.m. - 1:49 p.m.)

16 THE COURT: Do you need a moment,
17 Mr. Taylor?

18 DEFENDANT BARBER: Yes, please.

19 MR. TAYLOR: Very briefly, Judge.

20 (Whispered discussion, off the record,
21 1:49 p.m. - 1:50 p.m.)

22 MR. TAYLOR: We're ready to go, Judge.

23 THE COURT: Okay. And, Mr. Barber, if
24 you'd like to rejoin us on the stand. Thank you,
25 sir. And you're still under oath.

1 DEFENDANT BARBER: Understood.

2 THE COURT: Thank you.

3 And then we'll bring the jury back in.

4 (The following proceedings were held in
5 open court, the jury being present, 1:51 p.m.)

6 THE COURT: Okay. We're ready to
7 resume.

8 Ms. Atwood.

9 MS. ATWOOD: Thank you, Your Honor.

10 THE WITNESS: Test.

11 CROSS-EXAMINATION

12 BY MS. ATWOOD:

13 Q Good afternoon. You had a pretty lengthy
14 direct testimony. And I want to talk to you about a
15 number of things pertaining to your relationship with
16 Meagan Vance, your marriage to her and your conduct
17 in the past year or two.

18 So I want to start by talking about your
19 sexual relationship that you had when you were dating
20 and married to Ms. Vance. You defined that in your
21 own words as progressive, right?

22 A Yeah.

23 Q And based on your testimony, you seemed
24 to remember having several conversations with her
25 throughout your relationship about being not

1 necessarily monogamous various types of
2 experimentation; is that right?

3 A Yeah, that's correct.

4 Q Were these in-person conversations?

5 A Yes, it was also included in our marriage
6 contract.

7 Q Okay. So there was a lot of talk about
8 group sex and swinging ideas that you guys were
9 sharing with one another. Is that your testimony?

10 A That's correct.

11 Q Okay. And you just mentioned that this --
12 some of these things at least were included in actual
13 contract that you worked out?

14 A Yeah. Where she was allowed to have sex
15 with members of the same sex.

16 Q Okay. And that was something that she
17 signed off on?

18 A Yeah.

19 Q Explicitly?

20 A Yeah.

21 Q And these conversations -- the -- the
22 other ones involving various, you know, things in
23 your sexual relationship, she was a participant in
24 those conversations, right?

25 A Yeah.

1 Q And presuming that any of these acts
2 actually occurred, she would have been an active and
3 willing participant in those?

4 A Yeah.

5 Q And you also made some testimony about the
6 Naked Bike Ride.

7 A Yeah.

8 Q What year did you guys do that?

9 A That was in 2012 and 2013. That'd be June,
10 I think the days varied.

11 Q Okay.

12 A It was, like, June 20th, around there.

13 Q And you also discussed a little bit the one
14 couple that you guys reached out to back -- kind of a
15 ways back in 2011. Do you remember that?

16 A December of 2000 -- or sorry. Yes, in
17 January of 2011.

18 Q Okay. So that was fairly early on in the
19 relationship?

20 A Yeah.

21 Q Okay. And you made a lot of statements
22 about -- you -- you frequently used the word, "we,"
23 saying, "We contacted these people," and, "We sought
24 out this experience," and, "We did this," and "We did
25 that." But to be clear, it was you, for the most

1 part, who was engaged in the conversation with
2 these -- this other couple, right?

3 A She was also what is called carbon copied
4 into that and she also had direct correspondence with
5 these couples.

6 Q Sure. She had testified about conversing
7 with the male half of that couple --

8 A Yeah, well, she --

9 Q -- to some extent, right?

10 A -- with both, yes.

11 Q But your testimony about sending these
12 couples explicit images and things, you were the
13 sender, right?

14 A Yes. And she was also carbon copied into
15 the entire thread.

16 Q Sure. And you testified that when you
17 exchanged these messages and conversations and
18 photos, but particularly the photos and other images,
19 you said that these were exchanged via a
20 password-protected account; is that right?

21 A That's correct.

22 Q Okay. But you felt comfortable doing these
23 things and just carbon copying her after the fact
24 because it was your understanding that she had agreed
25 to this, right?

1 A Yeah. We were both the participant and had
2 seen their -- their pictures, in fact.

3 Q Okay.

4 A So if she wanted to take a look, you know,
5 and forward her those pictures.

6 Q So you had had distinct conversations,
7 explicit agreements about engaging in things like
8 the Naked Bike Ride and joint-couple sex?

9 A Yeah. In fact, she had sex with a woman
10 that met during the Naked Bike Ride.

11 Q So you had explicit agreements and
12 conversations about these things?

13 A Yeah.

14 Q So that's pretty different from now, right?

15 A Yeah. That's fair that now, we're not --
16 we're -- we're longer in contact and we're not having
17 sex, clearly.

18 Q And by your own testimony, you didn't have
19 any explicit agreements after the making of these
20 videos regarding whether or not you could post them
21 anywhere?

22 A So how does that affect my copyrights?

23 Q I'm asking you a question.

24 A What was the question?

25 Q You just testified that with regard to your

1 sexually-progressive relationship --

2 A Mm-hmm.

3 Q -- the things you engaged in, you had a
4 explicit conversations and agreements about, right?

5 A Yeah.

6 Q But as you testified on your direct, when
7 it came to posting these videos online in 2016, you
8 hadn't had a conversation at all about doing that.

9 A Why would I have a need to? They are
10 my copyright.

11 Q This is a yes-or-no question. You didn't
12 you converse with her at all before you posted those
13 videos?

14 A Why would I need to?

15 Q Did you --

16 THE COURT: Sir, you need to answer the
17 question, please.

18 THE WITNESS: No.

19 BY MS. ATWOOD:

20 Q Okay. Now, I want to kind of move through
21 the course of your marriage. You testified that it
22 was difficult to be separated, far away from each
23 other, right?

24 A Yeah.

25 Q Did you miss her while she was gone?

1 A Certainly.

2 Q Okay. And you mentioned that things kind
3 of started getting bad early on in the marriage in
4 2013; is that right?

5 A Yeah. Because we needed to basically pool
6 resources and I had to help her with her college
7 degree.

8 Q Okay. So things went south kind of fast.
9 And I believe she left you in late 2013; is that
10 right?

11 A To be precise, I actually had her evicted
12 from the home.

13 Q Was that in late 2013?

14 A That was in late 2013.

15 Q Okay. And you took it upon yourself to
16 evict her?

17 A Through a restraining order.

18 Q Okay. So suffice it to say things were
19 pretty far downhill at that point, right?

20 A Yep.

21 Q And when it became clear that you guys were
22 going to break up, you were pretty upset?

23 A Yeah.

24 Q Is that fair to say? And from that point
25 on, throughout the divorce, things continued to stay

1 fairly hostile, right?

2 A There was at one point where we had gotten
3 back together in February 2015.

4 Q But as we've heard through your testimony
5 and questions about mutual arguments with each other,
6 it was not a pleasant divorce?

7 A No, it was not a pleasant divorce.

8 Q Okay. It was your testimony during direct
9 that you believed that she was trying to harm you
10 throughout this process, correct?

11 A Yeah, Coercion.

12 Q And it was your testimony that you didn't
13 have this same kind of animosity toward her.

14 A Yeah, that's correct.

15 Q And it was also your testimony that you
16 didn't post these videos in question out of any
17 sort -- sort of animosity toward her.

18 A That's correct.

19 Q So I'd like to show you what I've marked as
20 State's Exhibit 17. Have you seen this before?

21 A Yep.

22 Q Is this a copy of a Craigslist post that
23 you made in late 2013?

24 A Yeah, this is a casual encounters
25 Craigslist post.

1 Q Is this the post that you made?

2 A Yes, that's correct.

3 Q That's how you're familiar with it?

4 MS. ATWOOD: Your Honor, we'd offer
5 State's 17.

6 MR. TAYLOR: No objection.

7 THE COURT: Thank you. It'll be
8 received.

9 (State's Exhibit No. 17 received.)

10 BY MS. ATWOOD:

11 Q Now, late 2013, as you've testified, was
12 the time period that things were getting pretty bad
13 between the two of you and fairly hostile. Is it
14 fair to say that you made during a pretty hostile
15 portion of that time?

16 A Yes, I had just been assaulted.

17 Q Okay. Isn't it true that on that post, you
18 posted an explicit photo of you and the victim having
19 sex followed by a caption stating that you were "done
20 with her," tired of dealing with her problems and
21 soliciting sex from other women?

22 A That's correct.

23 Q Okay. Is it fair to say that she did not
24 give you permission to do this?

25 A Why would she need to? It's my copyright.

1 Q Is it fair to say that she did not give you
2 permission to do this?

3 A I don't need permission to post my own
4 images.

5 Q Did you ask her at all for permission to
6 do this?

7 A I did not ask her for permission nor do I
8 need to.

9 Q Did she give you permission at all?

10 A She has no right to give me permission.

11 Q Is that a no?

12 A She has no right to give me permission.

13 THE COURT: Sir, you need to answer
14 the question.

15 THE WITNESS: No. Because she does not
16 have any ability to give me permission to post my own
17 images.

18 BY MS. ATWOOD:

19 Q So it's your belief that regardless of how
20 explicit the image was of her or potentially harmful
21 it was to her that you could do it anyway?

22 A Yes, under 106 of the Copyright Act.

23 Q Okay. Would you also agree that you posted
24 this particular content out of anger for her?

25 A I posted it 'cause I wanted to have sex

1 with someone else because she had told me that she
2 wanted me to solicit sex with someone else. And when
3 I had invited the neighbor over, she, instead,
4 assaulted me.

5 Q But that has nothing to do with the -- the
6 text in that post, does it? The text of that post,
7 you're saying you're done with her.

8 A Yeah.

9 Q You're tired of dealing with her stuff.
10 And you want --

11 A And I want to have sex with someone else.

12 Q -- someone else?

13 A Yeah.

14 Q Okay.

15 A So, I mean, how is it not consistent that
16 I'm allowed to solicit sex from other people using my
17 own images?

18 Q That wasn't my question. Did you make this
19 post out of anger toward her?

20 A I made this post 'cause I wanted to have
21 sex with someone else.

22 Q So you --

23 A And I was done with her as it says here.
24 "I am done with her. I want to have sex with
25 somebody else."

1 Q And you soliciting sex from another person,
2 why did you feel it was necessary to post a picture
3 of Ms. Vance without her permission?

4 A 'Cause I'm actually in the picture and it's
5 my picture.

6 Q So it's not your testimony then that you
7 did this out of anger?

8 A It says clearly, "I am done with her and
9 I'm looking for someone else to have sex with."

10 Q I'm asking for a yes or no. Where you
11 angry with her at this time?

12 A I had been assaulted and I was done with
13 her. I was done with the relationship.

14 Q Is that a yes?

15 A No.

16 Q So you weren't angry with her at this time?

17 A No, I didn't assault her. I was just done
18 with her. Had I been angry when she was trying to
19 attack me, I would have been obviously trying to
20 attack her, but I didn't. I didn't assault her. I
21 just told her to leave.

22 Q I'm not asking about whether you assaulted
23 her. I'm asking when you made this post, were you
24 angry with her?

25 A I was done with her, which is what it says.

1 Q Is that a yes?

2 A I was ambivalent. Is that an appropriate
3 response?

4 Q Sure. So we've already established that
5 you didn't ask her for permission to post an explicit
6 photo of her.

7 A Yeah, and --

8 Q But this wasn't the only time --

9 A Okay.

10 Q -- that you refused to respect her wishes
11 or her consent, was it?

12 A Well, the copyright says I'm the exclusive
13 person that can provide consent under 106 of the
14 Copyright Act.

15 Q So to be clear, this was not the only time
16 you had violated her consent, was it?

17 A She has no right to issue consent under the
18 Copyright Act.

19 Q Is that a yes?

20 A As I said, she has no right to issue
21 consent underneath the Copyright. Furthermore, the
22 State is prohibited from conveying to anyone else
23 right to consent underneath the Copyright Act.

24 Q So correct me if I'm wrong, but it sounds
25 like you're saying, yes, this was not the only time.

1 A I am saying that you are wrong on a -- on a
2 fact of law.

3 MS. ATWOOD: Your Honor, can you direct
4 the witness to answer the question?

5 THE COURT: Sir, your answer is
6 non-responsive. It will be stricken. You need
7 to answer the question that's being asked of you by
8 the prosecutor. You have an attorney who will assist
9 you if you need some assistance in redirect.

10 BY MS. ATWOOD:

11 Q So I'll return to my question. This was
12 not the only time that you refused to respect her
13 wishes or her consent, was it?

14 A She has no ability to give me consent. I
15 didn't ask her for consent.

16 THE COURT: Mr. Barber, please answer
17 the question either yes or --

18 THE WITNESS: This is not the only
19 time --

20 THE COURT: -- no.

21 THE WITNESS: -- I posted pictures
22 without seeking a consent that I don't need to
23 consent to.

24 BY MS. ATWOOD:

25 Q So, yes? You had done this without her

1 consent before?

2 A I don't need the consent, therefore, I did
3 not ask for a consent.

4 Q Well, even aside from the issue of
5 violating her consent by distributing sexual images
6 of her --

7 A So what right gives her the consent --

8 Q -- you --

9 THE COURT: Sir, you need to let her
10 finish the question before you respond.

11 BY MS. ATWOOD:

12 Q There were other times throughout the
13 course of your relationship that we've discussed here
14 in the trial where you refused to follow her wishes
15 and did things without her consent, right? I can be
16 more specific if you'd like.

17 A Yes, please be more --

18 Q Sure.

19 A -- specific.

20 Q So when she filed for divorce, it's true
21 that you refused to sign the divorce papers?

22 A Yes. I refused to sign a divorce paper
23 that was contrary to my marriage contract.

24 Q Okay. And in the months leading up to this
25 investigation, you continued contacting her despite

1 numerous requests that you stop?

2 A Which incidents are you referring to? Are
3 you referring to in December 2015?

4 Q I'm referring to several of the State's
5 exhibits. Do you have those up here?

6 A Are you talking about late 2015?

7 Q Hold on.

8 (Pause in proceedings, 2:04 p.m. -
9 2:05 p.m.)

10 BY MS. ATWOOD:

11 Q So in reference to State's Exhibits 5 and
12 6, isn't it true that you were also contacting her
13 without her consent?

14 A Yes. I was contacting her in these times
15 when she asked to not be contacted.

16 Q Okay. It's also your testimony -- it was
17 also your testimony on your direct examination that
18 you had no reason to believe that she wouldn't
19 consent to you disseminating sexual images of her
20 online. Is that an accurate statement?

21 A Can you rephrase the question?

22 Q Did you testify on direct --

23 A Mm-hmm.

24 Q -- that you had no reason to believe that
25 she wouldn't consent to you disseminating images

1 online?

2 A She had granted other people the right and
3 I owned the copyright and it clearly says in the
4 copyright that I have the exclusive consent to
5 distribute pictures that I own.

6 Q So is that a yes?

7 A Rephrase the question.

8 Q It's your testimony today --

9 A Mm-hmm.

10 Q -- that you had no reason to believe that
11 she wouldn't consent to you disseminating things
12 about her online?

13 A I would have no reasonable expectation that
14 she would have any right to object to my ability to
15 post pictures that I own of myself anywhere. She
16 issued a copyright and I addressed the copyright by
17 saying that it is my copyright.

18 Q You mean after she already found these and
19 contacted law enforcement to try to get them taken
20 off?

21 A No.

22 Q Is that the copyright you're talking about?

23 A I'm talking about the Digital Millennium
24 copyright notice that I was given.

25 Q In June?

1 A I think she says it was in June, but I
2 don't recall if it was in June or earlier.

3 Q So are you referencing Ms. Vance's
4 testimony that she sent a copyright request to a
5 pornography website that you had already posted
6 videos on asking them to be taken down? Is that what
7 you're --

8 A Yeah. And --

9 Q -- referring to?

10 A -- they said somebody has issued a
11 copyright notice. And clearly, according to the
12 Copyright Act in 201(E), it says the State can't give
13 anyone else consent. And it says in 106, I'm the
14 only one that can give consent I am the, in fact, the
15 person that owns it.

16 Q So -- I'm -- I'm going to stop you there.

17 A Okay.

18 Q I'd rather not get into copyright law right
19 now. I'm asking you some pretty direct questions.

20 A Yeah.

21 Q So you'd acknowledge that you had -- you
22 felt that you had no reason to believe you didn't
23 have a right to do these things?

24 A There -- I had never had any believe that
25 it was wrong for me to do these things.

1 Q Okay. But isn't it true that you received
2 a cease-and-desist notice in 2015?

3 A It is true. And in July 2015, she had
4 contacted me and we had sex and got back together
5 again.

6 Q Sir, I'm going to ask you to be responsive
7 to my questions --

8 A I did receive --

9 Q -- and to limit your answers to the
10 questions.

11 A I -- I did receive this, yes.

12 Q Okay. And isn't it true that that cease
13 and desist notice specifically states that Ms. Vance
14 felt that you distributing personal information
15 online against her, was harassing and intimidating?

16 A And, again, we -- we were discussing this
17 about how I would be able to publish allegations
18 that she had made to other people. And we had joint
19 custody --

20 Q I'm sorry, sir. I'm going to ask you
21 to answer --

22 A Okay.

23 Q -- the question. Isn't it true that the
24 notice you received explicitly told you that she
25 found your actions harassing and intimidating?

1 A I understand that she may feel that way.
2 But I have the ability to talk about truths to, say,
3 friends, say, to my website if I had a blog. I could
4 talk about my life in a blog. And just because
5 somebody asserts something doesn't make a -- a
6 necessity of fact.

7 Q But you knew at that time that she believed
8 that you were harassing and intimidating her?

9 A I understand that that's what she feels.
10 If she would like to have the only ability to talk to
11 our friends about our issues together, then I can
12 understand why she would want -- feel that was
13 harassing.

14 Q Okay. So I want to kind of move toward
15 what I believed your testimony was, although now, it
16 seems as though your testifying today that all of
17 your actions were lawful under your understanding of
18 the copyright law?

19 A Yes. Which expressly preempts State
20 attempts to override exclusive consent --

21 Q Okay.

22 A -- as provided in 106.

23 Q So I want to go back to what you initially
24 said was the reason you did this in your direct. You
25 stated that you repeatedly contacted her against her

1 will and -- and disseminated these videos on multiple
2 websites because you were extremely depressed at
3 the time?

4 A I was extremely -- I was extremely
5 depressed.

6 Q And you testified that -- but it was a
7 depression, that you were just lonely, but you
8 weren't angry?

9 A I was extremely lonely and I was literally
10 living outside. And I'm not sure if you've ever had
11 to live outside, but almost freezing to death gives
12 you a grim outlook on your life and your prospects.

13 Q But is it your testimony that your -- you
14 weren't angry at the time?

15 A No.

16 Q But that's not what you told Ms. Vance,
17 was it --

18 A I told --

19 Q -- in the months leading up to this
20 investigation?

21 A Yeah. I told Ms. Vance that I had some
22 contempt for her actions.

23 Q And that's not the only thing you said to
24 her, right? You told her that she was the one who
25 ruined your life, that she was the one who caused all

1 these things to happen to you?

2 A I'm not sure where that is, but if you can
3 provide me with it --

4 Q Certainly.

5 A -- it may have very well have happened. I
6 am upset that she may have tried to, for instance,
7 create events that did this to me.

8 Q I'm going to ask you to --

9 A Okay.

10 Q -- hold on. I -- I want to focus on the
11 question I actually asked. So I'm going to read to
12 you what's been marked as State's Exhibit 7. After
13 you --

14 A May I see that exhibit, by the way, after
15 you're done?

16 Q Sure. After you stated that you have
17 contempt for Ms. Vance, isn't it true that you told
18 her that a lot of the circumstances you were in now
19 are a result of, "You ruining my relationships with
20 my landlords because of how shortsighted you were.

21 "I'm also upset that I worked to bring you
22 to Portland and keep you in school, yet you cared so
23 little about me that you want me to suffer in
24 homelessness"? You said that to her?

25 A Yeah. And did I also say in that, I think

1 that I actually loved her?

2 Q But it's fair to say that that was a pretty
3 angry time for you?

4 A It was a pretty hopeless time.

5 Q You also told her in 2015 that she was --
6 and pardon me, I realize we're in court. You told
7 her that she was on your shit list. Do you remember
8 that conversation?

9 A I don't recall that conversation.

10 Q Do you recall that part of the conversation
11 where you told her that retribution was on the
12 table.?

13 A I don't -- I think that I was trying to
14 issue, like, an appeal of the marriage contract that
15 we had -- sorry, the divorce, rather, because she had
16 wanted me to pay for entire college education.

17 Q Nevertheless, you told her she was on your
18 shit list and threatened her with retribution,
19 correct?

20 A I -- I do not remember that. I don't know
21 where it is, but I may --

22 Q I can refresh your recollection.

23 (Whispered discussion, off the record,
24 2:12 p.m. - 2:13 p.m.)

25 MS. ATWOOD: So I would like to -- do

1 you mind if I mark on this?

2 BY MS. ATWOOD:

3 Q So do you remember the conversation with
4 Ms. Vance that you had back in July of 2015?

5 A Oh, was this the one --

6 Q It's the same conversation where you
7 mentioned --

8 A -- that we got back together, right?

9 Q -- the doxing.

10 A Yeah. And then I think we got back
11 together right after this.

12 Q So you recall that conversation?

13 A Yeah.

14 Q Okay. So do you remember the bracketed
15 portion of that conversation?

16 A Let me see the (indiscernible).

17 (Pause in proceedings, 2:13 p.m. -
18 2:14 p.m.)

19 THE WITNESS: Yeah, I was -- we had an
20 internet conversation that happened before I was
21 going to appeal the divorce decree that had me
22 essentially paying for her college education despite
23 the fact that I was doing her homework for her.

24 BY MS. ATWOOD:

25 Q So it is true then that you told her,

1 "Quite frankly, you are still on my shit list and
2 have not redeemed yourself. While knowledge is
3 freely given, retribution is still on the table"?

4 A Yeah.

5 Q Okay. Now, you also heard two witnesses
6 testify so far in this trial that you made
7 another threat in 2015 to create a website called
8 meaganvance.net and post her sexual transgressions;
9 is that accurate?

10 A That's actually not accurate.

11 Q You did create that website?

12 A I did create the website. It had a shampoo
13 thing on it. That's all that it had. In regards to
14 what I was planning on putting on it was essentially
15 the chat logs, all the chat logs that we ever had
16 together.

17 And that was, apparently, from what I've
18 heard from Ms. Vance's testimony, the reason why she
19 had her acquaintances put our pornography on the
20 internet.

21 Q Well, let's be clear. Her testimony was
22 that she had told people she was worried you were
23 going to put those things on the internet?

24 A I thought that, to be clear, she was the
25 one that gave them the URL and that they were trying

1 to protect her by putting our pornography on the
2 Internet.

3 Q No, that's not what she testified.

4 A That, I think, is actually what she
5 testified. I guess we could probably get a copy of
6 that to be more precise.

7 Q Well, I'd like to focus on your testimony
8 for the time being.

9 A Okay.

10 Q So despite the fact that you had repeatedly
11 contacted her without consent, expressed your anger
12 to her, threatened retribution toward her and, in
13 fact, posted, without her permission, in anger,
14 explicit videos online, you're testifying today that
15 when you posted these videos it wasn't out of anger
16 or for revenge?

17 A No. I was posting at the same time as I
18 posting this -- quite literally everything else that
19 I have. And there's also a GitLab which has similar
20 records showing, essentially, uploading 40
21 repositories or so of code that I've created at the
22 same time.

23 There's also (indiscernible) stuff on
24 Facebook where it shows me uploading all the rest of
25 the things I had at the time. I had no money, so if

1 I have no money, what happens is it all gets deleted,
2 just as the server that I had when I was in jail got
3 completely deleted because I couldn't pay for it.

4 Q So that's a yes that you weren't posting
5 these videos for revenge?

6 A I was posting it because if I didn't post
7 it, it was going to get deleted. And I had no money.
8 I was thinking about killing myself. I was thinking
9 about walking in front of a bus.

10 Q But you didn't try to find any other means
11 to preserve these that might not completely ruin
12 someone's life?

13 A How am I going to preserve them if I'm
14 dead?

15 Q Well, did you make any attempts to ask
16 Ms. Vance whether or not maybe she wanted them?

17 A I thought you said that I wasn't supposed
18 to contact her.

19 Q I haven't told you anything, sir.

20 A Okay. I --

21 Q I'm asking you --

22 A -- I was underneath the impression that --

23 Q Did you try --

24 A -- I was underneath the impression that she
25 didn't want me to contact her. And I'm not going to

1 make her more angry. I know what happens when I make
2 her angry. So I wouldn't have talked to her. I
3 wouldn't have put -- I wouldn't have sent these
4 to anyone because it would obviously make her
5 extremely angry.

6 Q But you had talked to her consistently in
7 the months leading up to when you did this and you
8 continued to talk to her after you did this.

9 A How consistently is once every month or
10 two months?

11 Q You just stated, sir, that you didn't feel
12 that you were allowed to talk to her about whether or
13 not it was okay to post these videos.

14 A The few times that I did talk to her, it
15 was times where I was extremely suicidal, feeling
16 upset. And I'm sorry that I -- I would -- I actually
17 apologized saying, "I'm sorry I'm burdening you
18 because I feel so bad about myself right now."

19 And when I have no one to talk to and I'm
20 feeling in dire straits, that she's the only person
21 that understands who I am and why I'm trying to reach
22 out. And --

23 Q So to be clear --

24 A Yeah.

25 Q -- you never tried to revisit that topic

1 with her?

2 A I never tried to revisit that topic.

3 Q And to be clear --

4 A I'm not going to try and --

5 Q -- she never gave you permission to
6 disseminate these?

7 A She has no reason to give me permission
8 because they are all mine and the Copyright Act that
9 gives me exclusive right to consent to the
10 distribution. And in Section 201 says the State is
11 prohibited from transferring or expropriating those
12 rights.

13 Q So that's a no, she never gave you
14 permission?

15 A Why would she have the ability to give me
16 permission? Why would it matter?

17 Q Sir --

18 A They are my pictures. I took them. As far
19 as I'm concerned, they're mine. I -- that's why I
20 wouldn't go asking people.

21 And I wouldn't go try and rub salt in the
22 wounds and say, "Hey, ha-ha-ha. I have these
23 pictures of you. I'm putting them online,' cause, of
24 course, what's going to happen is I'm going to have
25 her army of protectors --

1 Q I'm going to -- going to ask you --

2 A -- that'll to come after me again.

3 Q -- to return to my question.

4 A Okay.

5 Q Did you ever ask her permission?

6 A Why would I have needed to?

7 THE COURT: I think that this has
8 been --

9 MS. ATWOOD: Thank you, Judge.

10 THE COURT: -- asked and answered.

11 MS. ATWOOD: I'll move on.

12 BY MS. ATWOOD:

13 Q I also want to talk to you a little bit
14 about the issue of the doxing in July 2015. You
15 testified that you had heard these videos were
16 accessed and it was your understanding, from talking
17 to Ms. Vance, that she didn't care, more or less,
18 because she said that she had also heard about it.

19 A The response was one line, that she had
20 heard about it. And she did not express any sort of
21 concern whatsoever. We have both been completely
22 nude in public, photographed by the newspaper, of all
23 people, being naked.

24 I have no shame about having done that.

25 I have no shame about having sex or having a

1 sexually-adventurous lifestyle. I don't know why
2 she would have any shame for doing that. I
3 understand that she now believes that she doesn't
4 want me to do that.

5 Q I'm going to ask you to --

6 A Yeah, so what's the question?

7 Q -- please answer my question.

8 A Sorry.

9 Q So it was -- it's your belief that she
10 didn't care because of the nature of the statement
11 that she responded to you, that she had heard
12 about it?

13 A It is my assumption that if she had cared
14 she would have stated, "I care. Oh, my God. I'm
15 going to call the police. These people put our
16 pornography on the internet. We should have them
17 arrested and put in jail for two months."

18 Q So she never told you that she was happy
19 about it? She never told you that she was okay with
20 it?

21 A Well, apparently, she was the one that
22 provided it to them.

23 Q I'm asking you a yes-or-no question.

24 A She never gave me any description of how
25 she felt about it at all, other than she had heard

1 about it. And, apparently, she had provided it to
2 them.

3 Q And you've stated that you didn't care if
4 other people accessed these videos at that time
5 because it was not affecting your material
6 circumstances, right?

7 A Yeah. It -- everyone knows -- everyone
8 that knows us knows about this sort of stuff.

9 Q Well, and at the time, to be clear, wasn't
10 this when you were suffering with unemployment,
11 homelessness?

12 A At this time, I had, I think, left my job
13 about a month prior.

14 Q Okay. So there weren't really very many
15 material circumstances to be affected?

16 A Well, the reason why my material
17 circumstances and been affected were more about the
18 other accusations that had been lodged.

19 Q I'm just asking you whether or not --

20 A Well, I could --

21 Q -- there are very many material
22 circumstances --

23 A -- I could perhaps find another job, right,
24 if I wanted to and it wouldn't have materially
25 effected those circumstances either.

1 Q Well --

2 A -- because it happened.

3 Q -- let's be clear.

4 A Yeah.

5 Q Your material circumstances are pretty
6 affected now, right? You testified all about your
7 new job at Intel?

8 A Yeah, and that was affected by
9 incarceration. If someone had found this online, it
10 would have not have effected my job. And, in fact,
11 I'm fairly certain that it's actually prohibited from
12 discriminating against people for what's called
13 gender expression in the State of Oregon.

14 So she also would have been protected by
15 law. Gender expression includes speech and this is a
16 form of speech.

17 Q So returning to my questions, now your
18 material circumstances are effected by this whole
19 situation, right?

20 A Yes --

21 Q It's pretty upsetting?

22 A -- because of incarceration.

23 Q So you would agree that's reasonable for a
24 person to experience harm when something like this
25 gets out about them?

1 A I think it would be -- it would cause
2 material harm to arrest somebody for something that
3 shouldn't be a crime, certainly.

4 THE COURT: Mr. Barber.

5 THE WITNESS: Yes.

6 THE COURT: Please, listen to the
7 question and answer the question.

8 BY MS. ATWOOD:

9 Q Is it your testimony -- well, let me back
10 up. Would you agree that it's reasonable for a
11 person to feel harmed by sexually-explicit images
12 being released without their permission?

13 A Well, if what your question is as to
14 whether or not Meagan would be arrested --

15 Q No, that is not my question.

16 A Well, the -- 'cause they were my photos.
17 They were distributed without my permission by
18 Mrs. Vance. So if your question is if somebody would
19 be harmed by send -- by sending my sexually-explicit
20 photos without my permission and incarcerated, then,
21 yes, it would harm them.

22 Q That's not my question, sir. Is it -- do
23 you truly believe that it's impossible to be harmed
24 by someone disseminating explicit photos of you
25 without your consent?

1 A It is -- it is prohibited to discriminate
2 against someone for gender expression, which includes
3 speech. And that is in the State of Oregon.

4 Q So is -- that's your belief. Your belief
5 is that this all okay because it's your speech?

6 A I think that not only is it okay, but I
7 think that everyone who knows us personally already
8 knows about this. And what you do in your home stays
9 in your home. What you do at work has nothing to do
10 with what you do in your home.

11 Q Exactly, right?

12 A If people -- if people -- yeah. And if
13 somebody at work place had complained, they would be
14 breaking the law.

15 Q So I -- I'd like to talk about what you
16 just said. What you do in the home stays in the home
17 and what you do at work should not have to be
18 affected by that, right?

19 A That's why I don't send --

20 Q These videos were something you and
21 Ms. Vance made at home privately with each other
22 while you were married or dating, correct?

23 A While we married, we made these photos,
24 yes.

25 Q And since then, you've gone through a

1 hostile divorce, been issued a cease-and-desist
2 notice, multiple times told her that you have
3 contempt for her, correct?

4 A I have told her that I have contempt for
5 the things that she has done, which is, I think, what
6 I was talking about regarding the circumstances that
7 she had done when I say about ruining my relationship
8 with my landlord.

9 Q And now --

10 A So you can --

11 Q -- you're aware --

12 A -- can you love -- what -- can love
13 somebody and have contempt for their actions?

14 Q I'll -- I'll be asking the questions
15 here today.

16 A Okay.

17 Q So now, you're aware that Ms. Vance has a
18 job a special education teacher, right?

19 A Yeah.

20 Q At a middle school?

21 A Yeah.

22 Q That she's in a relationship?

23 A I understand, yeah.

24 Q That she's moved on from your relationship?

25 A Yeah.

1 Q And that she wants nothing to do with you?

2 A I understand.

3 Q Okay. And you don't believe that that
4 changes things as far as her consent would be
5 concerned with you disseminating these?

6 A Because that consent is legally protected
7 underneath federal law, which preempts state law.

8 Q So what's the answer to my question?

9 A Do I think it would harm her?

10 Q No. Do you -- Do you not think that that
11 would change her consent if it was ever given?

12 A There's no consent needed because she is
13 prohibited from having such consent.

14 MS. ATWOOD: I have no further
15 questions, Your Honor.

16 THE COURT: Mr. Taylor.

17 REDIRECT EXAMINATION

18 BY MR. TAYLOR:

19 Q Mr. Barber, I'm going to move through in
20 kind of a narrative fashion what Ms. Atwood went
21 through with you. The first couple of topics you
22 guys talked about where your sort of progressive sex
23 life.

24 A Yeah.

25 Q How many years -- can you give me a date

1 range that you guys were involved in that?

2 A The progressive sex life?

3 Q Yes.

4 A I would say three.

5 Q All right. Was that during the same period
6 that you guys participated in the World Naked Bike
7 Ride a couple times?

8 A Yeah.

9 Q And was Ms. Vance teaching at that time?

10 A Yes, she was.

11 Q All right. So Ms. Atwood asked you several
12 questions about this discussion that was had
13 supposedly between you, Ms. Vance and Mr. Goldstein
14 was perhaps there as well, this conversation about an
15 internet website. Do you recall Ms. Atwood asking
16 you those questions?

17 A Yeah.

18 Q All right. So Ms. Atwood linked those to
19 sexual transgressions. Do you recall her asking you
20 that question?

21 A I recall her asking that question.

22 Q Do you recall ever saying anything about
23 a threat to post sexual transgressions or just
24 transgressions?

25 A Transgressions. More precisely, all the

1 chat logs that we had accumulated because anyone who
2 sees those chat logs are immediately incensed by the
3 duplicitous nature of her communications.

4 Q So there was no mention of sexual
5 transgressions? Do I understand that correctly?

6 A Yeah, that's correct.

7 MR. TAYLOR: If I can -- I need to
8 approach and have a look at a couple of those
9 exhibits.

10 (Pause in proceedings, 2:26 p.m. -
11 2:27 p.m.)

12 BY MR. TAYLOR:

13 Q Ms. Atwood asked you some questions about
14 State's Exhibit 7.

15 A Yeah.

16 Q Do you recall that? That's the e-mail that
17 involves the contempt line.

18 A Yeah.

19 Q What is the date on that e-mail?

20 A That is May 30th, 2016.

21 Q So do I understand correctly that that
22 would be a -- at least nearly two months after these
23 videos were posted?

24 A Yeah.

25 Q So this bit about contempt came after that?

1 A After the posting the photos?

2 Q Right.

3 A Yeah. And it also says that I love her,
4 which means that you can love somebody and not like
5 the things that they do.

6 Q Understood. Ms. Atwood also asked you
7 several questions about this cease and desist that
8 you received?

9 A Correct.

10 Q Do you recall when you received that?

11 A That, I think, is dated April of 2015.

12 Q Was that during the divorce proceedings?

13 A That was during the divorce proceedings.

14 Q Subsequent to that, for example, July 2015,
15 did Ms. Vance initiate conversations with you?

16 A That was the thing where she talked about
17 the shit list. And after we had discussed that, we
18 had --

19 Q So is that --

20 A -- gotten back together.

21 Q Is that yes or no after this cease and
22 desist?

23 A Yeah, that's after this.

24 Q Thank you. You spent a lot of time talking
25 to Ms. Atwood about copyright, free speech, things

1 like that --

2 A Yeah.

3 Q -- correct?

4 A Yeah, that's correct.

5 Q At the time that you posted these videos,
6 were you thinking any of that stuff?

7 A No. I wasn't thinking about that at the
8 time, but it's come to my attention now that it's
9 become a big issue in my life.

10 Q So all your looking into copyright and
11 First Amendment stuff and all that came after this
12 case started?

13 A Yeah. I mean, at the time I knew that they
14 were mine. I'm in it. And I have a cursory
15 knowledge of copyright because I deal with computer
16 code.

17 Q When you were posting these images, were
18 you thinking about that stuff?

19 A Well, I mean, I know that I'm not supposed
20 to post things I don't own because that's how you get
21 in trouble for copyright infringement. I can't post
22 someone else's code. I can't post someone else's
23 pictures. I can only post my own things that I make.

24 MR. TAYLOR: All right. Thank you.

25 Those are all my questions.

1 THE COURT: Okay. Mr. Barber, you may
2 step down. Thank you.

3 MR. TAYLOR: Judge, I'm just returning
4 the exhibits to the Court.

5 THE COURT: Thank you, Mr. Taylor.

6 MR. TAYLOR: And, Judge, that's all we
7 have for the defense.

8 THE COURT: Okay. Thank you.

9 MR. TAYLOR: We rest at this time.

10 THE COURT: Thank you, very much.

11 Ms. Atwood, did you have any rebuttal?

12 MS. ATWOOD: I do, Judge. But can I ask
13 for a brief recess?

14 THE COURT: Okay.

15 MS. ATWOOD: Thank you.

16 THE COURT: All right. We're going to
17 take a brief recess.

18 And I'm assuming it won't be more than
19 five minutes?

20 MS. ATWOOD: No, that should be fine.

21 THE COURT: So you'll have time to walk
22 in the door, close it and come back out.

23 MR. TAYLOR: A little exercise.

24 (The following proceedings were held in
25 open court, out of the presence of the jury,

1 2:30 p.m.)

2 MS. ATWOOD: Thank you, Judge. I just
3 wanted to make sure that (indiscernible).

4 THE COURT: Sure.

5 (Recess taken, 2:31 p.m. - 2:33 p.m.)

6 THE COURT: I guess I only gave them
7 three minutes.

8 Okay. Ready?

9 MS. ATWOOD: Yes, Judge.

10 THE COURT: Okay. We'll go ahead and
11 bring the jury back in.

12 (The following proceedings were held in
13 open court, the jury being present, 2:35 p.m.)

14 THE COURT: All right. Ms. Atwood, you
15 may call your next witness.

16 MS. ATWOOD: Thank you, Judge. The
17 State will recall Meagan Vance.

18 THE COURT: You're still under oath.
19 Thank you.

20 **MEAGAN VANCE**

21 Was thereupon recalled as a rebuttal witness on
22 behalf of the State; and, having been previously
23 sworn, was examined and testified as follows:

24 ////

25 ////

DIRECT EXAMINATION

BY MS. ATWOOD:

Q So you just heard quite a bit of testimony and there's a couple of things I want to ask you about, starting with a -- an exhibit that was entered into evidence that I will refer you to if I can find it. So this is State's Exhibit 17. Are you familiar with what's depicted in that exhibit?

A Yeah.

Q And that's a sexually-explicit photo of you and the defendant?

A Yes.

Q You heard some testimony and some questions about that exhibit and, specifically, that the defendant testified that the reason he posted it was because you assaulted him. Were you ever charged with any crime?

A No.

Q Has the record of that incident been expunged?

A Yes.

Q The next thing I want to ask you is just a couple of questions turning back to this relationship the two of you had with another couple. You heard some testimony from the defendant about you

1 participating mutually in the dissemination of images
2 of yourself to this other couple. Did you ever send
3 any images to them?

4 A No.

5 Q Did you ever instruct the defendant to send
6 any images to them?

7 A No.

8 Q Did he ever ask or receive your permission
9 to disseminate the images he did send to them?

10 A No. He -- he told me about it after the
11 fact.

12 Q And is that what we're referring to when we
13 say you were CCed later in the e-mail?

14 A I don't remember if I was CCed, but I
15 was told.

16 Q Okay. The last thing I want to discuss
17 with you is a couple of statements that the defendant
18 made about false allegations that you made in the
19 past, specifically stating that he has a belief that
20 you were out to hurt him.

21 And we've -- you acknowledge that during
22 the course your divorce there were some mutual
23 arguments and threats between the two of you, right?

24 A Yeah.

25 Q When you contacted police for purposes of

1 the investigation of this case, what was your
2 motivation?

3 A I wanted the images gone -- or the videos
4 gone. I -- I wanted help with getting them gone.
5 And I knew that contacting him wouldn't get them
6 gone, so -- and I was just trying to get rid of them.

7 MS. ATWOOD: Those are all my questions.
8 Thank you.

9 THE COURT: Thank you.

10 CROSS-EXAMINATION

11 BY MR. TAYLOR:

12 Q Ms. Vance, just one or two things.
13 Ms. Atwood asked you some questions about that
14 assault. So you were in fact, arrested for Assault
15 against Mr. Barber?

16 A I was arrested for domestic violence,
17 Harassment.

18 Q Thank you. And Ms. Atwood asked you about
19 that being expunged, correct?

20 A Yeah.

21 Q And you, in fact, filed for that
22 expungement about a week after Mr. Barber was
23 investigated in this case?

24 A I filed for the expungement this summer.
25 I -- now that you mention, it -- it is around the

1 same time.

2 Q June 28th sound correct?

3 A I think so.

4 MR. TAYLOR: Thank you. Those are all
5 my questions.

6 THE COURT: Okay. Any redirect?

7 MS. ATWOOD: Nothing, Your Honor.

8 THE COURT: Okay. Ms. Vance, you may
9 step down.

10 THE WITNESS: Thank you.

11 THE COURT: Anything else, Ms. Atwood?

12 MS. ATWOOD: No, Your Honor.

13 THE COURT: Okay. So are you ready to
14 proceed into closing?

15 MS. ATWOOD: Yes. I just have a little
16 bit of setup to do.

17 THE COURT: Okay. So at this time, the
18 State has rested and we're going to hear the
19 attorneys' closing arguments.

20 (Pause in proceedings, 2:39 p.m. - 2:41
21 p.m.)

22 MS. ATWOOD: May I proceed, Your Honor?

23 THE COURT: Yes, please.

24 CLOSING ARGUMENT

25 MS. ATWOOD: So you've heard a lot of

1 evidence so far in this case and this is a -- as --
2 as you heard already from the judge, a fairly lengthy
3 statute that we're dealing with.

4 So what I've done is prepared a
5 PowerPoint to help us get through closing arguments
6 so that you can reference some of the things that
7 you're going have to be deciding later on in your
8 deliberations while I'm arguing.

9 So I first want to talk about the
10 purpose of closing argument. There's a number of
11 things that I'm going to do and that you're going to
12 have to do in your role as jurors in this case. The
13 first thing that I want to go over with you is just
14 to review the law.

15 It's been since the beginning of this
16 trial that we've actually talked about what the
17 statute says, so before I proceed with any discussion
18 of the evidence or the facts, I'm going to go over
19 line by line every single element of the statute,
20 what the definitions are and what everything means so
21 that we're on the same page before we talk about how
22 to apply the facts.

23 So after we review the law, what we're
24 going to do is review the evidence. There's a lot of
25 it in the form of exhibits, testimony. There's

1 computer disks, there's videos, there's images. We
2 have a lot to work with here.

3 But I'm going to try to get through most
4 of it during my closing and you'll have it all of it
5 for your review during your deliberations. And
6 what's important to know going forward is the
7 difference between the evidence and the facts.

8 So there's two sides to this case, as
9 you can see. And both sides have put forth evidence
10 of their own and as I'm sure you can see, those sides
11 don't jive. So you're going to have to decide in
12 your role as jurors what the actual facts are.

13 You take the evidence and decide what
14 parts of it are worthy of your consideration based on
15 what you believe is valuable and credible and that's
16 what you decide the facts from. So after you review
17 the evidence, we're going to go over some jury
18 instructions.

19 You're going receive a large packet
20 of information from the judge that includes these
21 instructions, but there's a few of them that I want
22 to talk to you about during my closing arguments.
23 And I want us to recall some of our earlier
24 discussion.

25 It's been since yesterday morning since

1 either of us had a chance to talk to you guys, but I
2 think that you'll find during your deliberations that
3 a lot of what we talked about is going to be pretty
4 relevant to how you decide this case.

5 So starting just from the top, Unlawful
6 Dissemination of an Intimate Image. This is the
7 charge that is in each and every single count in this
8 case. So they're all the same. I'm going to go over
9 the elements one time, but the elements remain
10 consistent throughout your deliberations.

11 So what the State has to prove to
12 establish the crime of Unlawful Dissemination of an
13 Intimate Image is, first of all, that the crime
14 occurred when we said it did. And I don't think
15 you're going to hear any real argument as to that
16 point. It's not exactly in contention when these
17 videos were posted.

18 But as the State has charged it, the
19 videos were posted sometime between January 1st and
20 June 21st of 2016. Now, the first element you're
21 going to have to decide on is whether the defendant
22 knowingly caused images to be disclosed through an
23 internet website, whether those images were
24 identifiable images of the victim and -- whose
25 intimate parts were visible or who was engaged in

1 sexual conduct.

2 You're going to have to decide whether
3 the defendant knew or reasonable should have known
4 that the victim did not consent to that disclosure.
5 You're going to have to decide whether the
6 intended -- whether the defendant intended to harass,
7 humiliate or injure the victim when he acted.

8 And along side that, you're going to
9 have to decide whether the victim was, in fact,
10 harassed, humiliated or injured by that disclosure
11 and, finally, whether a reasonable person in that
12 position would have felt harassed, humiliated or
13 injured by that disclosure.

14 So I'm going to start with the very
15 first element. Of course, as anything in the law,
16 there are definitions within definitions. So the
17 defendant knowingly disclosed -- or caused images to
18 be disclosed through an internet website.

19 There's a few parts that you're going to
20 have to be working with here, the first being the
21 definition of "knowingly," what it means to do
22 something with knowledge under the law in the State
23 of Oregon.

24 "Knowledge" means that a person acts
25 with awareness that their conduct is of a particular

1 nature or that a particular circumstance exists. So
2 we talked about this in jury selection, how you can
3 tell when someone means to do something versus a
4 mistake, whether they're aware of the circumstances
5 versus unaware.

6 That's the kind of deliberation you're
7 going to be dealing with when you're determining
8 whether someone acted knowingly. Knowingly is the --
9 I'll call it the second highest level of culpability.

10 Intentionally is the highest, when a
11 person acts with a conscious objective. The second
12 prong down is knowingly, whether they act with an
13 awareness. So the second piece of this element is
14 the definition of an image. I don't think that this
15 is really a point of contention.

16 The images involved in this case were
17 videos and I don't think you'll hear much by the way
18 of contradictory argument on the point, but that's
19 the definition. And, finally, what it means to
20 disclose. This includes a lot of things.

21 You can disclose something by
22 transferring it to another person, by distributing it
23 to several people, by exhibiting it, not necessarily
24 giving to anyone, by advertising someone to try to
25 access it or offering to, you know, disclose it to

1 someone.

2 So there's a lot of possibilities there.
3 And you're going to be required to determine whether
4 or not one of those things happened in this case. So
5 the second element that you'll be working with is
6 whether or not the image was an identifiable image of
7 the victim whose intimate parts were visible or who
8 was engaged in sexual conduct.

9 So "intimate parts" has a definition
10 that is fairly self-explanatory and I'm sure you guys
11 will have no problem determining that. And -- and I
12 don't think that it'll be a huge point of controversy
13 in the defense's closing argument whether or not
14 intimate parts were visible or sexual conduct
15 occurred in the videos at issue in this case.

16 You'll also be given some further
17 definitions regarding what "sexual intercourse"
18 versus "deviate sexual intercourse" means. Those
19 mean slightly different things. "Sexual intercourse"
20 has its normal meaning as you might expect.

21 "Deviant sexual intercourse" can include
22 things like types of oral sex, but I'll think you
23 find that sexual conduct was included in these videos
24 that were disseminated.

25 So the third element of Unlawful

1 Dissemination is whether or not the defendant knew or
2 reasonably should have known that the victim did not
3 consent to the disclosure of the images. Again, the
4 same definition applies for "knowingly" or with
5 "knowledge," whether he had an awareness that there
6 was no consent.

7 But in this case, the statute also says,
8 "Reasonably should have known." So you're working
9 with both whether or not there's evidence of his
10 subjective knowledge or whether or not, objectively,
11 he should have known under those circumstances. And
12 this is an "or," so either one of those that you find
13 would apply.

14 Next element, whether or not the
15 defendant acted with the intent to harass, humiliate
16 or injure the victim. Now, "intentionally" and "with
17 intent," as I mentioned before, is a bit of a higher
18 standard as far as culpability is concerned.

19 When someone acts intentionally, the
20 State has to show that the person acted with a
21 conscious objective to cause a certain result or to
22 engage in a particular type of conduct.

23 And in this case we know what the
24 conduct was and the result, obviously, is this
25 harassment, humiliation and injury. And what's going

1 to be important to you when you're working through
2 the evidence and deliberating is thinking about all
3 those things we discussed in jury selection.

4 When I asked you, how can you tell when
5 a person intends to do something versus when it's an
6 honest mistake or when it's not culpable, you think
7 about a person's statements. You think about the
8 circumstances, the relationship in question.

9 You think about whether or not there's
10 any evidence of motive or bias. Those are all going
11 to be very relevant to your determination in this
12 case. So the next element, of course, is whether the
13 victim was, in fact, harassed, humiliated or annoyed
14 by this disclosure.

15 This is a subjective standard and you're
16 going to have to decide whether or not, based on the
17 testimony, of the victim in this case, Meagan Vance,
18 she was harassed, humiliated or injured. And I -- I
19 don't think that that's going to be a real point of
20 contention either.

21 She testified very clearly how this is
22 affecting her life. But we'll get back to the pieces
23 of evidence that are relevant to this element later.
24 And, finally, the last element, whether a reasonable
25 person in this situation would be harassed,

1 humiliated or injured by the disclosure.

2 So this is the objective standard that
3 is supposed to, you know, counter balance whether or
4 not the victim was subjectively harassed or
5 humiliated or injured by the conduct.

6 And we talked about this in jury
7 selection, too. What are some scenarios where a
8 person -- where it might not be reasonable for them
9 to be harmed by this content or by this act being
10 committed against them?

11 So when you're thinking about the
12 circumstances of this case and the effects that it's
13 had on the victim, you'll have to ask yourselves
14 whether or not a reasonable person would have felt
15 the same way. So that takes us through all of our
16 elements.

17 And when you look at the elements as a
18 whole, I think you'll find that you can kind of
19 categorize them a little bit. The first two
20 elements, whether or not the defendant knowingly
21 caused the images to be disclosed and the nature of
22 the images themselves, really hits at the point of
23 what the defendant did, what actually happened.

24 The next two elements, whether the
25 defendant knew or should have known there was no

1 consent and whether he acted with the intent to
2 harass, humiliate or injure, those two elements
3 really get at what the defendant's state of mind was.

4 And, finally, the last elements
5 regarding whether the victim was harassed, humiliated
6 or annoyed and whether a reasonable person would have
7 felt the same, obviously, get at the result from the
8 defendant's conduct.

9 So the -- in the big scheme of things,
10 the -- the type of things that you're going to
11 deliberating on are, what happened? What was in the
12 defendant's mind? And how did it affect the victim?

13 So let's talk about what the defendant
14 did. The defendant posted sexual videos of the
15 victim to numerous pornography sites throughout the
16 spring of 2016. Now, how do we know he did that?
17 You've heard testimony to that effect. You'll see
18 exhibits to that effect.

19 Some of those exhibits were not actually
20 displayed during the course of trial. And that's
21 something that I should sort of offer as a -- a
22 general disclaimer. You guys saw me offer several
23 disks that the officers have used to compile their
24 screenshots and video captures of this evidence.

25 And it's important for me to address

1 that. This case is about images being disclosed to
2 people the victim didn't know without permission. So
3 those were not displayed to you in court.

4 But you're free to watch them, view
5 them, peruse them as much as you'd like during the
6 course of your deliberations, because there is
7 significant data in there that's going to be
8 important to your deliberations.

9 So let's talk again about what the
10 defendant actually did and how we know he was the
11 person who distributed these videos and how he did it
12 and when. First and foremost, he was the only person
13 who had the videos. The victim told you that they
14 record them on his phone. He was the person who
15 owned that phone.

16 She never received a copy of them. And
17 by their own agreement, they were not supposed to be
18 distributed to anyone else. And, of course, we have
19 ample evidence, both by the way of testimony and the
20 exhibits you're going to have your disposal, that the
21 videos were found on these websites linked to the
22 defendant's go-to user name.

23 The victim testified that he has used
24 the same user name, BarberB, throughout the course of
25 the entire time she has known him. So that's another

1 element -- or fact that points to the -- the fact
2 that the defendant was the one who engaged in this
3 conduct.

4 So along the same lines with what the
5 defendant did, these videos were identifiable. You
6 can watch the videos if you feel that that's
7 necessary, but the testimony sufficiently established
8 that you can see the victim's face, you can hear her
9 voice, you can see both of their entire bodies.

10 They're occurring in the defendant's
11 home. Both parties are easily identifiable in the
12 videos. And not only is she identifiable visually,
13 she's identifiable by her medical condition and the
14 fact that the defendant labeled the videos "Albino
15 Porn."

16 And you heard her own testimony that
17 she's about it as far as that particular fetish is
18 concerned. And she was identifiable by name. All
19 she had to do was Google her own name and the -- the
20 comments associated with the videos led to them.

21 So we know that the defendant posted the
22 videos. We know that she's identifiable in the
23 videos. And we know, obviously, that sexual and
24 intimate parts and sexual conduct was occurring in
25 the videos.

1 And just to top it all off, besides the
2 circumstantial evidence, the exhibits, the testimony
3 of numerous witnesses, the defendant admitted that he
4 posted these videos.

5 And, of course, the defendant's
6 admission to posting them in a very limited fashion
7 is contradictory to a lot of the evidence that you're
8 going to see. But we can get to that later.

9 So following up, what was the
10 defendant's state of mind when he did it? He knew
11 that she did not consent to this disclosure. He took
12 the stand in front of you, of course, and said that
13 she didn't have the right to consent to the
14 disclosure.

15 But the fact that she had had a concrete
16 conversation with him prior to the making of the
17 videos established that she did not consent to that
18 disclosure. The fact that they never revisited that
19 conversation after, initially, her saying, "Don't
20 disseminate these," shows that he knew that she did
21 not consent to that disclosure.

22 And to top it all off, the fact they --
23 these videos where made when they were in a committed
24 relationship and the only things to follow that were
25 hostility and divorce, cease-and-desist notices, the

1 defendant clearly knew that she did not consent to
2 him disseminating these videos.

3 Now, the defendant was aware of the
4 victim's new job and her relationship. And this is
5 particularly relevant to whether or not he knew about
6 the consent because, as the victim testified to,
7 there conversation about making them in the first
8 place included her main concerns, which were not
9 destroying her job prospects.

10 And she managed to get the job that she
11 had been working for for so long, so the defendant
12 had no reason to believe that it would have been okay
13 now to disseminate these photos. Again, the victim
14 repeatedly tried to get the defendant to stop
15 contacting her.

16 And that is analogous to this whole
17 situation. He repeatedly disregarded her requests.
18 You've seen the evidence and heard the testimony. He
19 made it a habit to do things without her consent.
20 Regardless of whether she told him and how many times
21 she told him, it was hurting her.

22 Once caught, the defendant tried to
23 cover his tracks. That is what we call a
24 consciousness of guilt. Once he was confronted with
25 the fact that we knew he had posted these videos, he

1 went on a removal spree to correlate with his posting
2 spree. And he even sent the victim proof that he had
3 gone around trying to remove them while he was
4 begging her not to get into trouble.

5 So the other part of the defendant's
6 state of mind is whether or not he acted with the
7 intent to harass, humiliate or injure the victim.
8 Now, you -- you've heard the background story. This
9 was a very rocky relationship that led to a very
10 hostile divorce.

11 But what you're going to find when
12 you're trying to decide what the defendant's intent
13 was is the things that the was confronted with on the
14 stand. He could to testify to you all day that he
15 wouldn't do this to hurt her.

16 But what you've seen is that when they
17 broke up, he posted naked pictures of her on the
18 internet in anger. When she came to move her things
19 out the house, he threatened to make a website and
20 post her sexual transgressions out of anger.

21 So when she finally moved on and had
22 told him to never contact her again, he decided to do
23 the same thing. He was going to get online, post the
24 videos that she had specifically told him she was
25 afraid of getting out in the world because he felt

1 injured by her and he wanted to injure her as well.

2 He blamed her for his unemployment, for
3 his homelessness, for his loneliness. You'll see
4 that in the text messages. It's in the e-mails.
5 It's in the testimony. There's no question about
6 what his mental state was toward the victim.

7 He did testify to you that he felt no
8 animosity, but it just doesn't -- it's not
9 corroborated by the evidence that you're going to be
10 able to look at. There's more. So the threats that
11 he made not only to create a website called
12 meaganvance.net and post her sexual information, he,
13 in fact, did that.

14 The witnesses you heard from saw the
15 website. And he threatened to seek retribution
16 against her in the months leading up to this
17 investigation. He said he would seek retribution.
18 He said that he had contempt.

19 And he admitted to Deputy Duenas during
20 the initial conversation they had that he posted the
21 videos because she ruined his life. Defendant's
22 actions, again, after he was caught, show that
23 consciousness of guilt, him trying to cover his
24 tracks.

25 The only reason a person would do that

1 would be if their intent was malicious. So I want to
2 go through some of the exhibits that you're going to
3 get a chance to look at. And you'll see the sort of
4 trajectory of escalation that's involved in the
5 defendant's contacts.

6 So as I mentioned before and as you've
7 heard in the trial, things started off not so bad
8 when the defendant was contacting the victim in late
9 2015, that he misses her, that he wants to see her,
10 things like that.

11 That transformed into, "I know I'm a
12 burden to you. I want to leave this world. I plan
13 on setting myself on fire." That transitioned into,
14 "I'm having a really rough time. I can barely
15 survive. Can we be friends?" which, of course, is
16 followed by another demand that he stop contacting
17 her.

18 This transition into, "I have no social
19 support. I have no friendships. I thought about
20 ending my -- ending my life numerous times," again,
21 the only response being, "I don't want anything to do
22 with you."

23 "I know you don't like hearing from me.
24 I need to get this off my chest. I don't have anyone
25 to talk to. I do miss and love you a lot of the time

1 and I have contempt for you. My circumstances are a
2 result of you. Everyone else leaves work and has
3 friends and family to come home to and I have
4 nothing."

5 And, finally, after the videos were
6 posted, the videos were found, the defendant was
7 caught, starting from the bottom you can see the
8 defendant's responses, "Stop trying to ruin my life.
9 Please make this stop. I'm trying to work hard. Can
10 you just tell me if you're going to move forward
11 destroying my life?"

12 This is followed, "I'll send you my
13 paychecks one by one," followed by, "Tell me what you
14 want from me. Let's come to an agreement. Please
15 stop ruining my life." He knew that what he had done
16 was wrong and he knew that he had gotten caught.

17 Of course, then he e-mails her proof,
18 not only that posted the videos, but that he had the
19 ability to take them down. And as you heard in his
20 testimony today, he didn't even think that he should
21 have had to do that.

22 So, finally, moving on to the last
23 couple of elements in the charge, the result, the
24 harm to the victim from what the defendant did.
25 The -- the victim in this case was very much

1 reasonably harmed by the defendant's actions.

2 You heard her testify about, again, the
3 conversation they had regarding making the videos,
4 her concerns at that time, the fact that, at this
5 point in her life, she has gotten to where she wants
6 to be. She has moved away from him. She is in a
7 functional relationship. She's got her job.

8 Of course, she's worried about the
9 professional ramifications of these now even more so
10 than before. Of course, when she testified about her
11 personal reactions to finding this on the internet,
12 she was afraid of what it could do to her life and
13 her reputation.

14 And she was humiliated. And she just
15 testified to you again on rebuttal that all she
16 wanted was for them to be taken down. She also
17 testified to you that every time she had to deal with
18 this, every time she found a new one, this whole
19 process has made her relive the hostility of a toxic
20 relationship.

21 And she testified that her current
22 relationship has suffered as a result. And anybody
23 who is in the victim's position would have felt the
24 same. So you're going to get a verdict form that's
25 got a lot of separate counts listed on it. But this

1 is the way that the counts are going to be divided.

2 The State has charged the defendant with
3 seven counts on the basis of each website that the
4 videos were found on. So I'm going to go through
5 each count one by one and talk to you guys about the
6 evidence that you've seen and heard that points to
7 the defendant being guilty of that particular count.

8 And I want to point out that there's
9 some key evidence that you're going to have to look
10 at and look for when you're going through what you've
11 heard, your own notes and what you can see for
12 yourselves on the disks and in the exhibits.

13 But the way that you can tell that each
14 count involves a separate and distinct crime is going
15 to be determined by the details of the posts. And
16 what you heard from Detective Rookhuyzen is that
17 there were four distinct videos in this case and he
18 was able to classify which one was which by how long
19 they were.

20 And -- and you'll see these times, this
21 21 minutes and 25 seconds, 16:01, 18:46. You'll see
22 those numbers over and over again. But that's how
23 you can tell which video is which, which were posted
24 to what sites how many times, how many times they'd
25 been viewed.

1 And things like dates are going to also
2 be very relevant to you in determining his guilt for
3 each individual count. When the defendant joined the
4 website, when his last login was on the website, when
5 the videos where uploaded, when the videos were
6 deleted.

7 All of those are going to be incredibly
8 relevant pieces of information for you. And,
9 finally, the number views. You heard from Detective
10 Rookhuyzen that this was significant to him in
11 addition to all these other bits of information in
12 differentiating between a scenario where the
13 defendant actively posted versus when one website
14 mirrored the content from another.

15 And in his testimony to you, he
16 explained that when content is mirrored, generally
17 speaking, the content is going to appear identical.
18 That's how a mirror works.

19 And the number of views, the dates, when
20 they joined, when they were uploaded, which videos
21 were uploaded, that's how you're going to be able to
22 tell that this wasn't an accident, that this was a
23 conscious intentional act on the defendant's part.

24 And, again, the number of views is also
25 going to be relevant to you in determining the

1 reasonableness of the harm to the victim. When
2 you're looking at the exhibits -- and this includes
3 the screenshots from the websites themselves --
4 you're going to see, obviously, not just the sexual
5 content of the victim and the defendant in this case,
6 but there's sexual content all over the place, on the
7 header, on the sidebar.

8 You're going to see some truly
9 disturbing images, some disgusting images. And that
10 is incredibly relevant to whether or not the harm to
11 the victim is reasonable. If a person has their
12 personal identity, their information, their own
13 intimate content displayed against their will on site
14 next to, like -- like, rape videos and things like
15 that, underage porn, things like that --

16 MR. TAYLOR: Objection, Judge.

17 THE COURT: This is argument. Go ahead.

18 MS. ATWOOD: It's entirely relevant to
19 whether or not a person would feel additional harm
20 and humiliation from being associated with sites like
21 that, from sites that they never would have wanted to
22 be on in the first place. Oh, sorry, I skipped
23 ahead.

24 So beginning with Count 1, Pornhub.com.
25 This was one of the websites where there was a clear

1 registration with the user name BarberB, the
2 defendant's go-to user name. This website, as you'll
3 see in the screen shots shows that he had joined two
4 years ago, been a -- been a member there for quite
5 some time.

6 You'll see that he uploaded two videos
7 in April 2016. And these were both titled "Albino
8 Porn," as all the videos are in this case. And it
9 was the 16:01 and the 18:46 video. And as Deputy --
10 or Detective Rookhuyzen testified these had a
11 substantial amount of views already, just after a few
12 months of being posted.

13 You'll see that his last login was in
14 June of 2016 and you'll see that based on the
15 information provided and the testimony and what was
16 still active in the exhibits, that those videos were
17 still active and alive in September 2016.

18 So this is all the evidence that you
19 have and all the evidence you need to find that these
20 videos were posted by him on the dates that they were
21 alleged to be posted and that they are the videos in
22 question of the victim in this case.

23 Moving on to Count 2, RedTube.com. This
24 was, again, another account located with user name
25 BarberB and a -- a totally independent registration.

1 And the reason that we know that is that the videos
2 that were posted, there were four of them.

3 So you heard some cross-examination of
4 the detective about the fact that RedTube is an
5 affiliate of Pornhub. But what he explained to you
6 is that if RedTube were merely mirroring their
7 content from Pornhub.com, it would appear the same.

8 And as you can see, RedTube had
9 significantly more content than Pornhub.com. You
10 can't possibly mirror something that isn't there for
11 you to mirror. So in addition to the two videos that
12 had already been posted to Pornhub, two more were
13 posted to RedTube.

14 And these videos are all -- all four
15 independent unique videos, as you can see by the time
16 stamp. And they all had different numbers of views
17 that were not consistent with any other website.

18 You'll see that the defendant, again,
19 joined in April, also different than Pornhub.com,
20 where he joined two years ago, and that his last
21 login was also in April. All four videos were still
22 active by the time Detective Rookhuyzen performed his
23 investigation.

24 Count 3, Porn.com. Again, this was a
25 separate, independent website, not an affiliate of

1 RedTube or Pornhub, but, again, had a registered user
2 named BarberB. The evidence you've heard during the
3 course of the trial and that you'll see in the
4 exhibits shows that he joined in March 2016, an
5 independent joining date, that he uploaded four
6 videos.

7 And these were four of the videos that
8 the victim initially found. She preserved the links
9 in a list that's been provided to you. And these
10 were the links that Detective Rookhuyzen later used
11 to try to find more information online.

12 And you'll also find that the
13 screenshots of the videos themselves were preserved
14 by Deputy Duenas in one of the disks that's available
15 to you. All four videos were removed after police
16 contact.

17 So we know that this website must of had
18 an independent act, an independent registered user,
19 an independent crime committed because, again, the
20 content is different. The joining date is different.
21 It has all four videos as opposed to just two.

22 And in this case, they were all removed,
23 whereas the videos on the other websites stayed. So
24 someone went in and removed those. And I think
25 you'll find that that person was the defendant.

1 Count 4, TNAflix. As you heard from
2 Detective Rookhuyzen, this also appeared to be a
3 totally independent website and not an affiliate of
4 the others. Again, had a registered user named
5 BarberB. And you'll see in the screenshots that he's
6 labeled as a verified member.

7 He uploaded two videos to that website
8 in March 2016. Those were the 16:01 video and the
9 21:25 video. Both of those were documented in the
10 evidence that's available to you. These videos were
11 still available by September 2016.

12 Count 5, xHamster.com. We learned a lot
13 of information about this. Not only was the user
14 info Benjamin Barber, but we also got his e-mail.
15 And the reason we got this is because xHamster.com
16 was the website that he forwarded an e-mail from to
17 the victim, showing that he had tried to cover his
18 tracks.

19 The user info clearly depicted both his
20 first and last name and, of course, the
21 starworks5@gmail.com that's been associated with him
22 throughout the course of his relationship with her.

23 He uploaded three videos to this
24 website. From the evidence that we received, they
25 were all labeled "Albino Porn" in the links and,

1 again, they were observed by the victim and then
2 later e-mailed from the defendant to the victim. He
3 requested that removal after he realized that he was
4 in trouble.

5 Count 8, PornTV. Sorry, I skipped ahead
6 in my numbers. I believe that should be Count 6; is
7 that right? So the next count, PornTV, the user name
8 on that website, again, BarberB. Four videos
9 uploaded this time.

10 This was also an independent website
11 that did not appear to be an affiliate of the Pornhub
12 network. These were all labeled "Albino Porn." And
13 they were preserved in screen shots by Deputy Duenas.
14 And those are going to be found for you to review on
15 State's Exhibit 15.

16 And, finally, our last count is
17 PornTube. This website refers to three videos that
18 were uploaded. Again, a unique amount of content in
19 reference to the other websites were postings were
20 located. The videos for the ones that Deputy Duenas
21 was able to actually pull himself.

22 And you can see State's Exhibit 14 for
23 more information about these. So we've gone over the
24 elements of the crime one by one and a little bit in
25 groups to discuss how we know what the defendant did,

1 how we know why he did it and how we know the type of
2 harm that it caused.

3 So when you're going back to deliberate,
4 you have a pretty important job. It's an essential
5 part of this process. But your job in today's case
6 can be described as follows: You have to decide what
7 the facts are.

8 Again, these two tables don't agree on
9 what the facts are and you are the people who have to
10 decide what actually happened. And the way that
11 you're going to have to do that is by reviewing the
12 evidence and deciding what evidence you're going to
13 accept.

14 Once you decide what the facts are from
15 that, you apply the law to the facts to see if the
16 facts fulfill the elements of the crimes we've just
17 discussed. You're going to have to review and follow
18 the specific instructions given to you by the judge
19 and I think they're going to be very helpful to you
20 in your deliberations.

21 And I'm going to go over a few of them
22 with you. And, finally, all you're here to do today
23 is to use your common sense. That's explicit in the
24 jury instructions, is that any determination that you
25 make of whether a crime was committed beyond a

1 reasonable doubt has to be made based on your common
2 sense.

3 So let's talk about reviewing the
4 evidence. And some of the instructions you're going
5 to receive. One of the instructions you receive has
6 to do specifically with what type of evidence you're
7 going to look at.

8 So there's two types of evidence,
9 generally speaking: Direct and circumstantial.
10 Direct evidence refers to eyewitness accounts. You
11 have a number of direct pieces of evidence in this
12 case, photos themselves. You can see the evidence of
13 the videos themselves.

14 The other type of evidence is
15 circumstantial. Circumstantial evidence is evidence
16 that, taken as a whole, can lead you to make an
17 inference about what a certain fact is.

18 A good example is, you know, you go
19 to -- you -- you bake a batch of cookies. You leave
20 your child in the room. When you come back into room
21 the cookies are gone and your child is covered with
22 chocolate. Circumstantially, you know who ate those
23 cookies.

24 So your decision in a trial when you're
25 deliberating as jurors is to take a look at both

1 types of evidence, decide what evidence you find
2 valuable and you can base your verdict on both one or
3 the other. Here, I would submit to you that we have
4 both.

5 Again, you've got the videos, you've got
6 the screenshots. There's no question what was found
7 and where it was found. You have the data, as we've
8 discussed when I went through single count with you,
9 of who posted it, how many times, how many views,
10 what dates, when they joined.

11 But you also have a series of very
12 important circumstantial facts that are going to help
13 you determine what the defendant's intent was, what
14 his knowledge was in this case and the circumstances
15 of his relationship with the victim, the
16 circumstances of his life at the time, the
17 circumstances of his testimony to you.

18 When you look at all that in light of
19 the actual evidence that's in front of you, you're
20 going to be led to no other conclusion than that the
21 defendant acted intentionally and knowingly in this
22 case.

23 So, again, your job today is potentially
24 to draw inferences. You're encouraged to draw
25 inferences. Your inferences have to be based on

1 common sense and reason. And you have to decide what
2 you believe. And a big part of that is deciding what
3 your thoughts are on all the testimony you've heard.

4 And there's specific instructions that
5 kind of guide you through how to analyze each
6 witness' testimony. So evaluating witness testimony.
7 In evaluating a witness and deciding whether you
8 believe what they say, there's a number of factors
9 that you should consider, first, being the manner in
10 which the witness testifies.

11 And I think that's going to be
12 particularly significant in this case, considering
13 you all got to observe the manner in which the
14 defendant testified when he was asked the tough
15 questions, when he was confronted with things that he
16 had said.

17 Again, the nature and quality of the
18 witness' testimony. Was it thorough? Was it
19 logical? Was it sensible? Was the person being
20 defensive? Was the person being evasive? Those are
21 all important considerations.

22 I anticipate that the defense might try
23 to argue that a lot of this case boils down to he
24 said/she said. The State would submit to you that
25 that's not the case. You have tons of evidence at

1 your disposal.

2 But if you do have a question -- and
3 what you're trying to decide is whether you believe
4 one witness over another -- this is the sort of thing
5 you're going to have to keep in mind. You have to
6 decide who is telling the truth and who is not.

7 And when you're talking about who's
8 telling the truth and who is not, the evaluating
9 witness testimony instruction is what you're supposed
10 to follow. Again, think about evidence that
11 contradicts the testimony of the witnesses.

12 The defendant took the stand and denied
13 ever having done or said things that are specifically
14 documented in exhibits that you're going to be able
15 to see. That's the kind of thing that you're going
16 to have to remember when deciding who to believe.

17 And, finally, evidence concerning the
18 bias, motives or interests of the witness. I mean,
19 it's clear here today what everybody's biases might
20 be. You've heard tons of testimony and seen the
21 exhibits yourself now, that the defendant had
22 contempt for victim when he committed these acts,
23 that he sought retribution against her when he
24 committed these acts, that he's acted with the same
25 intent before.

1 That's all the information you need to
2 that effect. And you heard him testify and admit
3 on -- on cross-examination that he didn't care at
4 time because it didn't affect his life. But now he
5 understands what it means to have a job and have
6 security and have a successful life.

7 And he still doesn't care about how it
8 affected the victim. So I'm going to have another
9 chance to talk to you after the defense does their
10 closing argument.

11 But I just really want you to keep in
12 mind, what is in front of you, how you're going to
13 decide who you believe and using our common sense in
14 this case. So with that, I will stop for now and I
15 will pick back up for rebuttal.

16 THE COURT: Thank you, Ms. Atwood.

17 We'll get the lights for you.

18 MR. TAYLOR: Thank you.

19 (Pause in proceedings, 3:19 p.m. -
20 3:20 p.m.)

21 CLOSING ARGUMENT

22 MR. TAYLOR: It kind of turns out that
23 my closing argument is probably going to go in the
24 exact reverse order of the State's argument just by
25 happenstance. First thing I want to talk to you

1 about is what your job is here. We talked about this
2 some in voir dire.

3 The judge is giving you instructions.
4 You are here for proof beyond a reasonable doubt of
5 the elements of this crime, which then begs the
6 question, what are you not here for? You are not
7 here for speculation, conjecture, guesswork.

8 You are not here to make judgments on
9 whether you prefer Mr. Barber or Ms. Vance, whether
10 you think they're good or nice people, whether you
11 think they are strange people because I'll start by
12 submitting to you, Benjamin Barber is a strange
13 person.

14 He reminds me of one of those toy
15 robots, the little tin old ones with the big screw on
16 the back. And you wind them up and they go round and
17 round and round on the floor and keep doing the same
18 thing over and over again. You saw Ben Barber
19 testify. He gets an idea in his head and he clings
20 to it so tightly.

21 He talked endlessly about copyright and
22 things like that, things that he looked into after
23 this case started. He gets an idea and he just hangs
24 onto it. That's what he was doing in this case
25 around the time of these postings.

1 But his idea then was that he wanted to
2 end his life. Now, I want to talk to you all about
3 the evidence and what you're really going to see
4 'cause it's important in this case -- and I saw many
5 of y'all were taking very good notes -- to pay very
6 close attention to exactly what the evidence was,
7 exactly what the testimony was because the judge is
8 going to give you another instruction, he gave one at
9 the beginning, that the lawyers arguments are not
10 evidence.

11 If your notes conflict with the
12 evidence, you rely on your notes -- conflict with our
13 representation of the evidence because there has been
14 a great deal of hyperbole, exaggeration and slipping
15 additional facts into representations of the evidence
16 that were not reflected by the testimony.

17 Example being, Ms. Vance and
18 Mr. Goldstein testified to this statement Mr. Barber
19 made back in early 2015 sometime about this website.
20 Both of them very clearly testified that he said he
21 was going to make this website about the
22 transgressions. Transgressions.

23 And they were asked, was there mention
24 of the videos or sexual content? And the both said,
25 "No." And the State stands up here and injects

1 sexual transgressions into that representation of the
2 testimony.

3 To pitch this as some prior threat,
4 you've got to know he said, "Sexual transgressions,"
5 last time. Now, he's doing this. They must be
6 linked. Look to your notes because your job is to
7 be -- be very careful finders of fact in this case.

8 And as to that particular point, your
9 notes will reveal that it was transgressions,
10 absolutely no mention of pornography. But speaking
11 of the pornography, let's talk about that. You
12 didn't end up having to view it in this trial.

13 And there is not a dispute in fact as to
14 whether those videos were pornographic in nature,
15 whether they contained sexual and intimate acts.
16 They did. So what do we know about them otherwise?
17 There are four videos, all about the same, taken
18 about the same time, both videos equally featuring
19 Ms. Vance and Mr. Barber, which then raises
20 questions.

21 And many of these questions, we talked
22 about in voir dire. And I'm going to expand on a
23 couple of other facts and then talk about the
24 questions it raises. So you've got both of them in
25 the videos, totally consensually made, both having a

1 good time, both voluntarily there.

2 What were they made on? They were made
3 using Mr. Barber's camera phone. His property, his
4 person. Where did they go? His computer, what his
5 phone hooks up to.

6 And why is this important? Because in
7 our voir dire and you likely know this from your
8 common sense, there was a great deal of discussion
9 about technology, photos like this, videos like this
10 because it's a huge thing these days.

11 You see it on the news. You hear about
12 friends and family members doing it. You hear about
13 stories gone wrong with it. And the question then
14 becomes: What are the different types of these
15 photographs?

16 Because you have very different
17 scenarios. For example, somebody takes their own
18 nude photograph of themselves; photo of just
19 themselves. Sends it to somebody else. These are
20 the topics we got into in voir dire.

21 So your question then becomes: Where is
22 the consent line? What rights do you have to keep
23 ultimate consent over a photo? Is there likely more
24 consent? Do you have greater control over what
25 happens to that photo if it's just a photo of you

1 versus a photo of two people?

2 When there's a photo of two people, a
3 video of two people, who has the right to do things
4 with that? And I'm not talking about copyright, I'm
5 just talking about your common sense, your reason and
6 the questions you need to ask yourself about this
7 case and this type of behavior.

8 Because where is the line drawn? You
9 have a photo now of three people. Do we need
10 everyone's consent to do anything with it? Does the
11 keeper of the photo, the video, have more of a right
12 to it? What about the creator, the person who made
13 the video themselves?

14 These are the questions you need to ask
15 yourselves when it comes down to the contents of
16 those videos, who had the rights to them to do what
17 they wanted? Now, the next question you get to is:
18 Reasonable persons. Reasonable beliefs.

19 And what we're getting at here are the
20 topics we broached in voir dire about what do people
21 expect is going to happen? And we went through this.
22 The whole group talked for a long time and, again,
23 these are things you know.

24 People have come to realize there's a
25 significant danger in making these types of photos

1 and videos because everyone knows they get out.

2 Would a reasonable person make these kinds of videos?

3 Can a reasonable person then complain if they make a

4 video with somebody else, then it got distributed?

5 Again, getting back to who has the right

6 in a shared situation like this? But you're not just

7 dealing with the average person here. Because what

8 do we know about Mr. Barber and Ms. Vance? They are

9 not, apparently, average people when it comes to

10 their escapades.

11 And I'm not going to beat this point to

12 death, but you have heard a great deal of testimony

13 that they were involved in a variety of activities at

14 this time. They wanted to get out there and live it

15 up and experience all the things there are in life.

16 But everyone knows that there are

17 dangers and there are risks to engaging in that kind

18 of behavior. And some of them were very clearly not

19 a problem at all here. For example, you do the world

20 Naked Bike Ride. You get naked. You get on your

21 bicycle. You ride around Portland. People take

22 photographs of you.

23 You are out there in the nude for the

24 whole world to see, for the newspapers to photograph.

25 It's a huge thing every year. So how can you then

1 turn around and say, "That was fine. I engaged in
2 those activities. But this? No."

3 And this plays into the doxing thing.
4 The reason being, what did Ben Barber know about
5 concern about these videos? Because the testimony is
6 that Ben Barber did not -- was not aware of any
7 agreement to keep these under lock and key.

8 In fact, to his knowledge, they were
9 part of their lifestyle. They were for sharing with
10 all these other folks that they were trying to talk
11 to and meet and things like that. And the
12 circumstances seem to corroborate that. The Naked
13 Bike Ride.

14 So then the question becomes: How can
15 you really say that there must have been an
16 expectation of privacy? And the doxing thing brings
17 that to light. I was thinking about Ben Barber's
18 side of that. Ms. Vance testified to her -- her
19 side, her knowledge of what was going on there.
20 Sure.

21 Was any of that communicated to Mr.
22 Barber? July of 2015, "Have you heard, people are
23 trying to dox our pornography? To share it on the
24 Internet?"

25 "Yeah, I heard about that." And Ms.

1 Vance's explanation, no matter what you make of it,
2 if you think of what effect that had on Mr. Barber.
3 And the only possible effect, the only possible
4 answer that could give him is that she doesn't care.
5 He's had the videos the whole time. Whatever.

6 What else do you know about the videos?
7 Again, Ms. Vance testified to her side -- her opinion
8 on those videos. I'm talking about the divorce. She
9 tells us, "Oh, I was very concerned about them during
10 the divorce. I spoke to my lawyer." But at
11 absolutely no point, were they brought up in those
12 proceedings.

13 Answer this question: Did anybody
14 mention them in all the filings and paperwork? No.
15 Did you ever discuss it with Mr. Barber? When you
16 were splitting up, did you say, "Hey, remember those
17 videos" that she was, evidently, quite concerned
18 about?

19 "Hey, now that we are splitting up,
20 those need to be destroyed, deleted, kept under lock
21 and key," was there any discussion? No. Because,
22 folks, the reason I'm covering all these things about
23 what was said to Mr. Barber, what did people let him
24 know, is because his mental state is an important
25 part of this crime.

1 If you commit a crime unwittingly or not
2 knowing what the circumstances are, then you aren't
3 guilty of a crime. That's these mental states that
4 Ms. Atwood had up there with the long convoluted
5 definitions.

6 But the question comes down to: What
7 was that person feeling in their head? What were
8 they feeling in their heart? What were their
9 intentions? What did they know about the
10 circumstances?

11 And all of the evidence and testimony
12 leads to the belief that Mr. Barber was under the
13 impression, for a substantial period of time, not
14 just when these videos were posted, but reaching much
15 farther back, that she didn't care about these
16 videos.

17 She wasn't worried. She never has been.
18 So how can you find proof beyond a reasonable doubt
19 that he must have known or reasonably should have
20 known that she would be upset by this disclosure?
21 Because all the evidence and testimony points in the
22 opposite direction.

23 And you might say, and the State may
24 argue, of course somebody would be harmed by this.
25 What other -- what other possibility is there? But,

1 folks, as I've talked about, we're not dealing with
2 everyday conservative normal people.

3 We're not dealing with people who would
4 never have a photo like this in the first place.
5 We're dealing with a couple that was living this life
6 for quite a long time. That was out there in public
7 view doing a whole lot of things that reasonable
8 people would not engage in in the first place.

9 I want to get back to talking about some
10 things you're not here to do. And I want to talk
11 about the divorce. Again, I don't mean to beat to
12 death every single fact. It is clear from everyone's
13 testimony, this was an ugly divorce.

14 The marriage didn't last very long,
15 right? They get married the end of 2012, and by the
16 end of 2013, she's moving out. They're splitting up.
17 They come to loggerheads. I talked to you some in my
18 opening statement about folks who make a mountain out
19 of a mole hill, that old saying.

20 This case represents yet another
21 mountain out of mole hill. And we know that that is
22 their practice. What facts do we have showing that?
23 All sorts of discussion about their previous
24 relations -- or the sexual adventures that were
25 going on.

1 They cannot get those straight. Things
2 get blown wildly out of proportion in both different
3 directions. But more importantly, their actions
4 during the divorce. As we just learned, Ms. Vance
5 gets arrested. There's a whole kerfuffle there.
6 That leads to Mr. Barber turning around and going
7 cruising on Craig's List for other folks to meet.
8 What about during the divorce?

9 It's very clear that they just bickered,
10 fought throughout the whole thing. All their
11 communications that we've seen and talked about are,
12 "I'm going to get you arrested for this. I'm going
13 to get my lawyer and go after you for fraud. I'm
14 going to get you arrested for blackmail." They go on
15 and on, back and forth.

16 These people are toxic for each other.
17 But I said, what are you not here to decide? You're
18 not here to decide whether you condone any of their
19 activities or their behavior, the way that they
20 relate to each other. These aren't your concerns.

21 You're not here to pick a side or pick a
22 winner. You're here for proof beyond a reasonable
23 doubt, whether or not the State's proven to you that
24 Mr. Barber committed these crimes. Speaking of
25 which, I need to take a moment to talk about the

1 intricacies, the individual counts.

2 Now, by and large, the things I am
3 telling you apply to all the counts, but I would be
4 remiss if I did not have a discussion with you about
5 Detective Rookhuyzen, Deputy Duenas -- Duenas, and
6 the things that they uncovered. And Ms. Vance as
7 well.

8 You have seven counts in front of you.
9 Which ones -- which websites did Mr. Barber actually
10 upload these documents to? Which websites do we not
11 know whether or not he did? He admits to the police
12 that he put them on two or three websites.

13 And here the State is stuck in the
14 lurch, because the State is having to say to you,
15 with reference to statements he made to police,
16 "Believe some of them, but not the others.

17 "Buy into the statements related by
18 Deputy Duenas as to why he did it, believe those
19 wholeheartedly. That's our case. But this bit about
20 two or three websites, don't believe that. It was
21 way more." Then why is there a question?

22 There's a question because, as Detective
23 Rookhuyzen and Deputy Duenas talked about, these
24 pornographic websites, a number of them are
25 affiliates and subsidiaries of others. So you have a

1 situation where, for example, Benjamin Barber puts a
2 video on Porntube.com.

3 It so happens that Redtube.com is an
4 affiliate of that website. And there was a great
5 deal of discussion that it is very common amongst
6 these websites, particularly the ones that are
7 mirrors and affiliates, to mirror content.

8 Somebody puts a video on Porn Tube
9 somebody creates an account on RedTube, things get
10 automatically uploaded -- mirrored to the other site.
11 And the State is relying heavily in making their
12 distinctions on the view counts.

13 But I submit to you that there is no
14 evidence with any certainty that these view counts
15 necessarily have to be distinct. If a video gets put
16 on Porn Tube and then the next day RedTube
17 automatically, you know, whatever software it has
18 that automatically copies it, puts it then on
19 RedTube, you do have two, distinct videos on two
20 distinct sites.

21 Obviously, they would, therefore, have
22 different view counts. But where is the proof of an
23 independent act? Because the State is telling you
24 that each one of these, beyond a reasonable doubt,
25 was an independent act. That Mr. Barber went down

1 the line and said, Porn Tube, upload. RedTube,
2 upload.

3 And it's clear, as he admitted to the
4 police, that he did upload to XHamster, Pornhub and
5 Porn.com. Deputy Duenas told you that and Mr. Barber
6 told you that on the stand. There's no dispute of
7 fact there. The question becomes the other four
8 sites.

9 Which has the State proven to you beyond
10 a reasonable doubt, was a separate action and which
11 are you simply unsure about? Because if you are
12 unsure, then your verdict is not guilty. That's what
13 the law requires of you.

14 If you don't know whether he uploaded
15 that site or not or whether it's a mirror or was
16 automatically pulled from another site, your verdict
17 on those counts is decidedly not guilty, without a
18 question towards any other elements of the crime.

19 I want to turn and talk a little bit
20 about the things the State is relying on, and this is
21 turning back to the big picture. Things that apply
22 to all counts. The State talked to you repeatedly
23 about this idea of consciousness of guilt. That Mr.
24 Barber's actions, after being alerted that the police
25 were involved, displayed he's consciously guilty.

1 He knows he did something wrong. And
2 the State's extrapolation of that point, is that he
3 must then carry this supposed consciousness of guilt
4 and apply it to the intent related to the crime. And
5 here's an important distinction, too.

6 The main that we are attacking is the
7 intent, which is what I'm going to finish my talk
8 about. The intent element of this crime. Because of
9 those seven elements, one of them is intent to
10 humiliate, to injure, to harm. So the person who
11 uploads a video, only commits a crime if their
12 conscious objective, at the time they upload that
13 video, is to cause harm.

14 If their actions are malicious. So
15 going back to the State's consciousness of guilt
16 argument, the State relies on two basic things there:
17 Number 1, the fact that he pulled the videos down.
18 That he tried to clean them up.

19 Folks, that was exactly what Ms. Vance
20 wanted him to do. In her text messages to him, she
21 says, "We need to talk right now. It's about the
22 videos." The light goes on in Mr. Barber's head.
23 Those videos I put up a couple months ago. So what
24 does he do? Of course, as soon as he gets home from
25 work, he starts trying to pull them down.

1 Ms. Vance has let him know, at this
2 point, that she isn't happy about that.
3 Consciousness of guilt? No. He's trying to be
4 decent to the woman that he still has feelings for.
5 And that's one of the problems with these folks is
6 that six years in, Mr. Barber is still totally hung
7 up on her. He's in love with her.

8 He is the wind-up robot and just keeps
9 plugging along for Ms. Vance. So what consciousness
10 of guilt is there? Oh, it's being a decent human
11 being. It's saying the person I care about has let
12 me know they are not happy about this. I am rushing
13 home to try and get these videos off the Internet to
14 make her happy.

15 And then things got worse. Obviously,
16 Deputy Duenas starts calling him. He realizes, oh,
17 my God, the police are involved. None of these are
18 things that he knew when he posted those videos. And
19 that's your question here. So when he sends Ms.
20 Vance these follow-up e-mails, "I'll give you my
21 paycheck. Please don't ruin my life." Yeah, he
22 feels bad.

23 But he wants the situation to be over.
24 You cannot transfer this supposed consciousness of
25 guilt to his actions two and a half months earlier.

1 There's simply no link. All he knew was that she's
2 unhappy. She's called the police. And he wants to
3 get out of this situation. Of course he does.

4 That doesn't equate to criminal intent
5 two and a half months earlier. Let's talk about the
6 things he says to Deputy Duenas. Going back to my
7 wind-up robot analogy. Deputy Duenas contacts
8 Mr. Barber.

9 When they finally talk on the phone,
10 Duenas says, "What's up with these videos? What's
11 the deal?" He's, obviously, a police officer, so
12 this is not a good phone call to receive. How does
13 Mr. Barber react?

14 He gets wound up. All this pressure
15 winds the spring up, and he just starts spewing the
16 entire back story of their relationship. That's what
17 he did on the stand. He's going a hundred miles a
18 minute talking about threats and blackmail and their
19 friends and doxing.

20 And the list just goes on. And all of
21 this, including his current relationship, gets thrown
22 at Deputy Duenas who, to his credit, admitted, "Yes,
23 my report, which is my testimony, represents what I
24 got out of that conversation. Yes, there was a lot
25 to that conversation. He told me many things. This

1 is what I got out of it."

2 So he's cherry picked, and that's fine.
3 He's trying to hit the important parts. He's a
4 police officer with a lot of cases. He can't
5 possibly sit down there and write out verbatim what
6 every single interview is. You're going to get a
7 jury instruction on this point.

8 The jury instruction's entitled,
9 Defendant's Statements. And it goes through a list
10 of questions you ask yourself on the law. When
11 somebody comes into court and takes the witness stand
12 and starts talking about things that a defendant
13 said, the law tells you to look at those skeptically
14 and ask yourself a number of questions.

15 Did the person who's testifying about
16 those statements accurately hear what the defendant
17 was trying to say? Did they understand what he was
18 trying to say? If they recorded it, did they record
19 it properly? You've got to ask yourself all these
20 questions, particularly what you know about Benjamin
21 Barber right now.

22 Because it's so easy to understand and
23 imagine how that conversation with Deputy Duenas
24 went. "Did you post these videos?" Blah, blah,
25 blah, blah, blah, blah, blah, blah. He went on and

1 on with the whole story, and Duenas was trying to
2 keep up. So for the State to hang -- their hat on
3 these statements, it doesn't get you there.

4 The law tells you: Be skeptical. And
5 you now know, based on everything you've heard about
6 those statements, you're not getting the full story.
7 The full, tortured story that he certainly relayed to
8 Deputy Duenas. So the question becomes -- the
9 big-picture question -- intent.

10 What was going through Benjamin Barber's
11 head in April when he posted those videos? And to go
12 back through the facts, what do we know? We
13 basically -- we basically pick up in November. And
14 I'm talking about the text messages, the e-mails,
15 things like that.

16 Because some of these statements written
17 and recorded just like that, are an amazing window
18 into what they were thinking. What their mental
19 state was at. Because it's easy for witnesses to
20 walk into court and talk about things that have
21 happened. As I'm sure many of you can imagine from
22 your common sense, when you look back on things that
23 have happened in your life, it's easy to look at them
24 with rose-colored glasses.

25 There's a reason that expression exists.

1 As human beings, when we think about our past, think
2 about our actions, the things we've said to other
3 people, the things we've done to other people, we
4 look at them in a way that makes us feel good about
5 ourselves. You forget the rough edges of things.
6 You forget the nastiest parts of things you've said.

7 So when a witness comes in and tells
8 you, "This is how it all happened." Tells you the
9 giant story of their relationship, you know from your
10 common sense they will be inherently biased, whether
11 they want to or not. The facts, evidence, written,
12 e-mails, texts, those can't be changed by somebody's
13 rose-colored glasses. They're uncontrovertible.

14 So what do we know about Ben Barber's
15 communications to Ms. Vance? Because, obviously,
16 someone's communications towards somebody are likely
17 to reflect their feelings towards somebody.

18 So November, December, the texts Ms.
19 Atwood showed you. "I miss you. I'm lonely. I wish
20 we were spending Thanksgiving together. I wish we
21 were spending Christmas together. I miss you, ben."
22 Is there an ounce of this malice in there?

23 Is there a threat? No, there's not.
24 There's sad. They quickly turn hopeless. So what do
25 you know about what's going on with Ben Barber at

1 that time? From what he told us and nobody seems to
2 dispute, he is so incredibly down on his luck. No
3 job. No house. He's sleeping on the roof of an
4 industrial warehouse.

5 So of course he is hopeless. Of course
6 he is in despair. The next few months. From his
7 testimony we know, he checks himself into OHSU.
8 There's suicidal thoughts. He's wavering between
9 jumping in front of a bus and lighting himself on
10 fire. It is nearly impossible to imagine how that
11 would feel.

12 And the only person in his life he
13 believes may care about him, he believes may even
14 notice if he does one of these two things, is Ms.
15 Vance. And sure, Ms. Vance doesn't want to hear from
16 him. Again, that's not a fact you're here to decide.

17 He reaches out to her and starts telling
18 her about these plans. No doubt that was unfortunate
19 to hear. No doubt that was traumatizing to have
20 somebody try and put that burden on you. But that's
21 what the wind-up robot does.

22 Where do the e-mails go after that?
23 March, darker and darker. It is nothing but despair.
24 Which leads us, in the timeline, directly to the time
25 when these videos are posted.

1 Late March, early April, the videos go
2 up. And what are they part of? They're part of his
3 purge. His attempt to make some kind of mark on this
4 world. Because both he and Ms. Vance testified to
5 their whole lives, they have wanted to make a mark.

6 Since the beginning of their
7 relationship, they would talk about things that they
8 would do. How they were going to change the world.
9 They were going to do great things for coding to help
10 people with vision problems, to do cancer research.
11 They're both people who want to help the world.

12 And when Mr. Barber looked at the,
13 apparently, quite serious possibility that he would
14 remove himself from the world, he said, what mark am
15 I going to leave? That's exactly the type of
16 question somebody with those kinds of interests asks
17 themselves.

18 And so what did he do? Goes on
19 Facebook. Puts all his personal photos. Him as a
20 kid. Him traveling. All those kind of things. He
21 goes on these websites he mentioned, Git Hub, Git
22 Lab, these coding websites, and he dumps all of his
23 code he's ever written.

24 He says, "World, have at it. I'm
25 probably going to be out of here soon." And the

1 pornography. He gets on it and says, "Well, that
2 goes up there, too. Maybe somebody will enjoy it.
3 Maybe somebody will remember me."

4 These are the thoughts of that wind-up
5 robot again. He's now chugging towards, apparently,
6 his own demise. And this is how he's going to leave
7 his mark on the world. It's an incredibly sad thing
8 to think about, but every bit of the evidence as to
9 what was going on with him at that time, leads to
10 that same conclusion.

11 The State hangs -- again, hangs their
12 hat on a couple of facts that are misapplied and
13 misrepresented. Number 1, the State's really into
14 that May 30th e-mail where he mentioned some
15 contempt. May 30th happens two months -- month and a
16 half, two months -- after these videos were
17 supposedly put up.

18 And by that time, his fortune's have
19 turned, right? We know he's gotten this great job at
20 Intel. He's real happy about things. He's on the up
21 and up. He is housed. So he's back doing his normal
22 things. Write Ms. Vance, try and impress her with
23 all the great things he's doing for the world.

24 Sends her that long e-mail about doing
25 coding on the human cancer genomes. I don't

1 understand that stuff, but he's impressed. And it's
2 his plan he's going to win Ms. Vance back by showing
3 her he's coming through in the world and doing all
4 this great stuff.

5 And he revets to his old, "I still have
6 contempt for you." But that e-mail has nothing to do
7 with what happened two months later, because we know
8 that the fortunes of his life and his attitude on
9 everything has changed by that point due to the
10 improvement of the situation.

11 And the second thing the State tries to
12 hang their hat on with regard to intent at the time
13 these videos were posted. Is the supposition that
14 these videos, but only one video, XHamster, was
15 tagged with her name. So I'll ask you: What
16 evidence have you seen of this fact?

17 Because that is an incredibly important
18 fact. Were that to be true, that would have a lot to
19 do with this case. Now, Ms. Vance has talked about
20 it. Have we seen any proof? Any physical evidence?

21 Because in this case, we have seen a lot
22 of evidence. A lot of screen shots. A lot of
23 downloads. A lot of search warrants. Requests for
24 information.

25 But there is no evidence of that one,

1 crucially important fact and you should ask
2 yourselves: What do you make of that? Everyone
3 knows how to take a screen shot.

4 Why was that in the screen shot? So,
5 folks, I'm going to wrap up. I'm asking you to look
6 at the evidence. As I said earlier, people can walk
7 into court and say all kinds of things.

8 Evidence doesn't change. Text messages
9 and e-mails don't change. When you look at the
10 elements of this crime, and ask yourself what was Ben
11 Barber's intent? The evidence on that point is
12 clear. He was going to leave this world. This was
13 the mark he was going to make. He was not angry with
14 Ms. Vance. He was not trying to hurt her.

15 Quite frankly, he probably wasn't even
16 thinking about her. I'd ask you to find him not
17 guilty. Thank you.

18 THE COURT: Thank you, Mr. Taylor.

19 Ms. Atwood?

20 MS. ATWOOD: Thank you, Judge.

21 REBUTTAL ARGUMENT

22 MS. ATWOOD: So there are a few things
23 that I want to address based on what defense counsel
24 talked to you guys about. And I want to start off by
25 addressing the array of interesting excuses that the

1 defendant has tried to pose to you during our trial.

2 And I've kind of found three large
3 themes. And I guess first, I should just note for
4 you -- and I'm sure you've already kind of realized
5 this yourself, but it appears that the defendant
6 can't decide what his defense is in this case. One
7 minute he's saying he was suicidal and was making his
8 mark on the world.

9 The next minute he was saying she
10 explicitly gave him permission to do this. And then
11 he's saying well, maybe not explicitly, but over the
12 course of something that happened six years ago, I
13 got this implication that she would consent to it.

14 And, finally, we have this bizarre idea
15 of some kind of copyright defense, where he felt that
16 he was the owner entitled to do what he did to her.
17 Folks, that should be your first red flag. And none
18 of these defenses are supported by the evidence.

19 That when you take his testimony for
20 what its worth, when you look at the rules for
21 evaluating witness testimony, you're not going to
22 find it worthy of your belief. I mean, think about
23 this idea of a copyright defense.

24 It doesn't exist. It does not matter if
25 one person or two person or ten people were involved

1 or depicted in this video. What matters is that the
2 victim was depicted in these videos. Intimate images
3 of her. It also doesn't matter who personally
4 recorded them.

5 Or who stored them on what type of
6 device. It does not matter. What matters is that he
7 disseminated them to other people without her
8 permission, because he wanted to cause harm to her.
9 And it is misleading, I would submit to you, as to
10 what the law is to indicate that any of those things
11 matter.

12 The law is the law, and we went over the
13 elements. You're required, as jurors, to follow the
14 law. And the only things that you're here to decide
15 is whether he had that intent. Whether he engaged in
16 the act of the disclosure and whether it harmed her.

17 You're required to decide those
18 elements. Unlawful Dissemination is a crime, whether
19 or not the defendant wants it to be. And knowledge
20 of the law, knowledge of what the -- the legal
21 ramifications mean is not a defense to a crime.
22 Ignorance of the law is no defense. What he did was
23 illegal.

24 Now, moving on to his other interesting
25 defenses, this idea that somehow she implied her

1 consent to him. That by, you know, five, six years
2 ago, engaging in consensual sex and even making these
3 videos, despite her reservation, that she somehow
4 lost the right to complain about them.

5 There's a term for that in the criminal
6 justice world. And you refer to it as
7 victim-blaming. It's illogical. It's offensive.
8 And in this case, it is totally unsupported by the
9 evidence. There is a difference, and I know you guys
10 will see this -- I'll give you more credit where
11 credit is due.

12 I know you see the difference between a
13 person actively engaging in sexual conduct with their
14 partner that they're married to versus consenting to
15 that person disseminating it across the world after
16 you've had a horrible divorce. You see the
17 difference there. We talked about marriage in jury
18 selection. There's an expectation of trust.

19 There's an expectation that you can
20 disclose and be intimate with your partner and not
21 have to worry that that person's going to try to harm
22 you. And we also talked about divorce and the
23 ramifications of a divorce and the fact that divorces
24 often lead people to seek revenge against one
25 another.

1 That's the type of dynamic we're dealing
2 with in this case. The defendant trusted -- or the
3 victim trusted the defendant when they made these
4 videos.

5 She gave him a very, very limited
6 consent for their creation. And somehow he's
7 convoluting that point and perverting that whole idea
8 to say that she lost the right to be hurt right now.

9 Defense also poses this argument to you
10 that this is yet another example of a mountain out of
11 mole hill. Folks, this is not a mole hill. We
12 discussed this in jury selection.

13 When someone does this to another
14 person, they know -- everybody knows, that it can
15 cause huge ramifications and difficulties in their
16 life.

17 The consequences can be immense. And
18 you heard from Detective Rookhuyzen that by the time
19 he was able to see these videos, just a couple months
20 after they were posted, more than 11,000 people had
21 seen this. That's a mountain of people.

22 That's a mountain of violations of the
23 victim's rights, of her privacy, of her sense of
24 security. This is not a mole hill. Now, finally,
25 this idea of the suicide defense. I believe when you

1 go back to deliberate, you'll find that this also
2 doesn't really make sense in light of the evidence,
3 the actual evidence that you're going to have in
4 front of you.

5 And in light of your own common sense
6 and reason, the things you're required to use as
7 jurors. When a person, who admittedly and in
8 reported conversations, has threatened another with
9 retribution, who's said that this individual ruined
10 his life, who has been the recipient of a cease and
11 desist notice, notifying him that displaying personal
12 content of the victim online is considered harassment
13 and intimidation, when that person later goes on to
14 do just that, it has nothing to do with his
15 depression.

16 Sure he was depressed. The State's not
17 denying that. He was homeless. He was jobless. He
18 had lost the person that he loved. But don't
19 convolute that into thinking that that's an excuse
20 for his actions. He wanted to leave this world and
21 make his mark on it before he did so.

22 If he wanted to make his mark, he
23 would've posted videos of himself. Maybe limit it to
24 a message. Maybe blog about it. Maybe talk more or
25 post things involving his, you know, grandiose ideas.

1 Trying to disseminate ideas about how he wants to end
2 climate change, cure cancer. The good things about
3 his life.

4 When you think about the manner in which
5 he testified. When you think about the actual
6 information that you have, is this a person who was
7 writing his last love letter to the earth? Or is
8 this a person who, in fact, was depressed, was very
9 angry and was using this as a last opportunity to
10 lash out at the person who he thought caused that.

11 That's what was happening in this case,
12 even if he was suicidal. Now, the next couple of
13 things I want to talk about is this idea that the
14 testimony of the victim in this case doesn't count as
15 proof.

16 Defense counsel kept telling you, "You
17 heard Ms. Vance say this, but there's no proof. You
18 heard Ms. Vance say that, but there's no proof." As
19 you'll read in your jury instructions, there's an
20 explicit instruction telling you that the testimony
21 of any witness that you believe is sufficient to
22 prove any fact in question. The testimony of
23 witnesses is proof, if you believe it.

24 And in this case, I would submit to you
25 that you're going to go back to your deliberations

1 and find that you believe Ms. Vance. And the reason
2 for that is, because she's the person who testified
3 to you the facts that are supported by the exhibits.

4 The facts that are supported by the
5 defendant's own statement. As a matter of fact,
6 there's only one person who testified in this case,
7 whose testimony isn't supported by the evidence
8 that's available to you, and whose testimony is
9 contradicted by every other witness who testified And
10 that's the defendant.

11 He's the person in this case who had the
12 motive to commit the act and the motive to testify in
13 an untruthful way to you. When he took the stand for
14 his direct examination, he answered questions very
15 thoroughly. He seemed very calm. He got emotional.
16 But you saw him on cross-examination.

17 As soon as he was faced with things that
18 he had said, he tried to deny they had happened. He
19 tried to twist his own words to fit a different
20 scenario. He tried to totally ignore the questions
21 being asked of him.

22 That's the person whose testimony you
23 have to consider. Is that a person who sounds
24 neutral to you? Is that a person who sounds like
25 they're not biased? Now, I guess I -- I would

1 finally close with just saying that in order to
2 believe his testimony, you're going to have to ignore
3 the testimony of the other witnesses.

4 You're going to have to ignore the
5 evidence that's in the exhibits that's in the
6 exhibits provided to you. You're going to have to
7 ignore your own common sense and what you know about
8 relationships. What you know about the Internet.
9 What you know about revenge and what you know about
10 divorce.

11 That's what you would have to do to
12 believe the testimony that he offered to you. Now,
13 defense counsel also poses the idea that it was easy
14 for a witness to just come in here and talk about
15 what happened. I don't think that you'll find that
16 it was easy for Ms. Vance to come in here and talk
17 about what happened.

18 There was a lot of argument thrown at
19 you about her having -- wanting to seek vengeance
20 against him. There were a lot of questions on
21 cross-examination of her about whether or not she was
22 the one trying to get him in trouble. You can say it
23 had similar arguments during their divorce.

24 I don't think you're going to find,
25 during your deliberations, that she came here trying

1 to cause trouble in his life. She came here because
2 something horrible had been done to her by him on
3 purpose. And she testified to you that all she
4 wanted was for the videos to be taken down.

5 She's not here out of malice for him.
6 She didn't testify out of malice for him. And it
7 wasn't easy for her to take that stand. Now, again,
8 to believe that the defendant's only guilty of the
9 counts involving XHamster and Porn.com and Pornhub,
10 you'd have to believe his testimony.

11 And as you've already heard, his
12 explanation to Deputy Duenas that those were the only
13 sites he posted on, doesn't make any sense, because
14 he also, later, told Deputy Duenas he'd had all the
15 videos removed and that he'd sent that proof to the
16 victim.

17 But as we've seen in the exhibits, he
18 only sent the victim proof of removal from one
19 website and that was XHamster. Inconsistency.
20 That's what matters when you're determining who to
21 believe in this case.

22 So, ladies and gentlemen, I'm going to
23 close now and let you go into your deliberations, but
24 I do want to emphasize again that this is a serious
25 crime. It is a crime, whether or not the defendant

1 wants it to be. And everything that you've seen and
2 heard throughout the course of this case can only
3 lead you to one conclusion.

4 And it's that he maliciously,
5 intentionally and knowingly committed Unlawful
6 Dissemination of Intimate Image against Meagan Vance.
7 And for those reasons, I'm going to ask you to find
8 him guilty on every single count. Thank you.

9 THE COURT: Thank you, Ms. Atwood.

10 COURT'S INSTRUCTIONS

11 THE COURT: All right. I'm going to go
12 ahead and give you the instructions that you're to
13 use when you begin your deliberations. It Is your
14 sole responsibility to make all the decisions about
15 the facts in this case. And you're going to have
16 copies of these instructions to take back with you.

17 You must evaluate the evidence to
18 determine how reliable or how believable that
19 evidence is. When you make your decision about the
20 facts, you must then apply the legal rules to those
21 facts and reach your verdict. Remember, however,
22 that your power to reach a verdict is not arbitrary.

23 When I tell you what the law is on a
24 particular subject or tell you how to evaluate
25 certain evidence, you must follow these instructions.

1 Do not allow anything I've said or done during the
2 course of this trial to suggest that I have formed
3 any opinion about this case. Keep in mind that a
4 judge is required by law to give certain instructions
5 in every criminal case.

6 When I have sustained objections to
7 evidence or ordered that evidence be stricken or
8 excluded from your consideration, you must follow
9 these rulings. Do not consider such matters during
10 your deliberations. Base your verdict on the
11 evidence and these instructions.

12 The lawyers' statements and arguments
13 are not evidence. If your recollection of the
14 evidence is different from the lawyers' recollection,
15 you must rely on your own memory. In deciding this
16 case, you are to consider all the evidence you find
17 worthy of belief.

18 It is your duty to weigh the evidence
19 calmly and dispassionately and to decide this case on
20 it's merits. Do not allow bias, sympathy or
21 prejudice any place in your deliberations.

22 Do not decide this case on guesswork,
23 conjecture or speculation. Do not consider what
24 sentence might be imposed by the Court if the
25 defendant is found guilty.

1 Generally, the testimony of any witness
2 whom you believe, is sufficient to prove any fact in
3 dispute. You are not simply to count the witnesses,
4 but you are to weigh the evidence.

5 Keep in mind that each party is entitled
6 to the considered decision of each juror. Therefore,
7 you should not give undue weight to another juror's
8 notes or memory if they conflict with your
9 recollection of the evidence. The Court, as I said,
10 will provide you with written jury instructions for
11 your use.

12 When you use these instructions, do not
13 place undue emphasis on any particular instruction,
14 but rather view the instructions as a whole. The
15 defendant is innocent unless and until a defendant is
16 proven guilty beyond a reasonable doubt. The burden
17 is on the State to prove the guilt of the defendant
18 beyond a reasonable doubt.

19 Reasonable doubt is doubt based on
20 common sense and reason. Reasonable doubt means an
21 honest uncertainty as to the guilt of the defendant.
22 Reasonable doubt exists when, after careful and
23 impartial consideration of all the evidence in the
24 case, you are not convinced beyond a reasonable doubt
25 that the defendant is guilty.

1 When a witness testifies about
2 statements made by the defendant, you should consider
3 such testimony with caution. In reviewing such
4 testimony, you should consider, among other things,
5 the following: Did the defendant make the statement,
6 and if so, did the defendant clearly express what he
7 intended to say?

8 Did the witness correctly hear and
9 understand what the defendant said? Did the witness
10 correctly remember and relate what the defendant
11 said? Did the witness intentionally or mistakenly
12 alter some of the words used by the defendant,
13 thereby changing the meaning of what was actually
14 said?

15 If, after weighing such factors, you
16 conclude the defendant said what he intended to say
17 and that the witness to the statements correctly
18 understood, remembered and related to you what the
19 defendant said, then you are authorized to consider
20 such statements for what you deem them to be worth.

21 The term "witness" includes every person
22 who's testified under oath in this case. Every
23 witness has taken an oath to tell the truth. In
24 evaluating each witness's testimony, however, you may
25 consider such things as the manner in which the

1 witness testifies. The nature and quality of the
2 witness's testimony. Evidence that contradicts the
3 testimony of the witness. Evidence concerning the
4 bias, motives or interests of the witness.

5 In deciding this case, you may draw
6 inferences and reach conclusions from the evidence,
7 provided that your inferences and conclusions are
8 reasonable and are based on your common sense and
9 experience.

10 There are two types of evidence: One is
11 direct evidence, such as the testimony of an
12 eyewitness. The other is circumstantial evidence,
13 the proof of a chain of circumstances pointing to the
14 existence or non-existence of a certain fact.

15 You may base your verdict on direct
16 evidence, or on circumstantial evidence or on both.
17 In this case, the defendant is charged with seven
18 separate counts of the crime of Unlawful
19 Dissemination of an Intimate Image. Defendant has
20 entered a plea of not guilty to these charges.

21 A plea of not guilty is a denial of
22 every fact alleged. A person commits the crime of
23 Unlawful Dissemination of an Intimate Image, if the
24 person, with the intent to harass, humiliate or
25 injure another person, knowingly causes to be

1 disclosed through an Internet website, an
2 identifiable image of the other person, whose
3 intimate parts are visible or who is engaged in
4 sexual conduct.

5 The person knows or reasonably should
6 have known that the other person does not consent to
7 a disclosure. The other person is harassed,
8 humiliated or injured by the disclosure. And a
9 reasonable person would have been harassed,
10 humiliated or injured by the disclosure.

11 In this case, to establish the crime of
12 Unlawful Dissemination of an Intimate Image, the
13 State must prove beyond a reasonable doubt the
14 following elements: The act occurred on or between
15 -- January 1st, 2016 and June 21st, 2016.

16 Benjamin J. Barber knowingly caused
17 images to be disclosed through an Internet website.
18 The images were identifiable images of Meagan Vance,
19 whose intimate parts were visible and/or who was
20 engaged in sexual conduct.

21 Benjamin J. Barber knew or reasonably
22 should have known that Meagan Vance did not consent
23 to the disclosures. Benjamin J. Barber intended to
24 harass, humiliate or injure Meagan Vance. Meagan
25 Vance was harassed, humiliated or injured by the

1 disclosure.

2 And a reasonable person would have been
3 harassed, humiliated or injured by the disclosure.
4 Although a witness may be allowed to state his or her
5 opinion, you are not required to accept that opinion.
6 To determine what value, if any, you give to a
7 witnesses opinion, you should consider such things as
8 the witness's opportunity and ability to form the
9 opinion, the witness's believability and how the
10 witness reached the opinion.

11 A person acts "intentionally" and "with
12 intent" when a person acts with a conscious objective
13 to engage in a particular result or engage in a
14 particular conduct. A person acts "knowingly" and
15 "with knowledge" if the person acts with an awareness
16 that his or her conduct is of a particular nature or
17 that a particular circumstance exists.

18 Knowledge is also established if the
19 person acts intentionally. These are the definitions
20 for you to use. Disclose includes, but is not
21 limited to, transfer, publish, distribute, advertise
22 and offer.

23 Image includes, but is not limited to, a
24 photograph, film, videotape recording, digital
25 picture or other visual reproductions regardless of

1 the manner in which the image is stored.

2 Intimate parts means uncovered human
3 genital, pubic areas and female nipples. Sexual
4 conduct means sexual intercourse or deviant sexual
5 intercourse or masturbation.

6 Sexual intercourse has its ordinary
7 meaning and occurs on any penetration, however
8 slight. Emission is not required. Deviant sexual
9 intercourse means sexual intercourse where a person's
10 consisted -- between persons consisting of contact
11 between the sexual organs of one person and the mouth
12 or anus of another.

13 This is the verdict form that you'll
14 have to go back with you. It's got the seven counts.
15 Each one says Unlawful Dissemination of an Intimate
16 Image, but it specifically lists the different
17 websites that are alleged in this.

18 So that you'll have a website for each
19 of the seven counts. You need to evaluate each of
20 these independently and make your vote. When you
21 return to the jury room, select one of your members
22 to act as your presiding juror.

23 The presiding juror has no greater
24 voting weight but is to preside over your
25 deliberations and be the spokesperson for the jury.

1 You should then deliberate and find your verdict. If
2 it becomes necessary during your deliberations, to
3 consult with me, you need to do so in writing. And I
4 will consult with the parties before responding.

5 No one except for you, the jurors, is to
6 be involved in your deliberations. Therefore, do not
7 tell anyone, including myself or my staff, how many
8 of you are voting guilty or not guilty until you've
9 reached a lawful verdict or been discharged.

10 This being a criminal case, each and
11 every jury must-- juror -- must agree on your
12 verdict. When you have arrived at a verdict, the
13 presiding juror will sign on the appropriate form.
14 And, again, the presiding juror's signature is on the
15 second page with ability to date this.

16 And after you have reached a verdict,
17 you'll signal the bailiff and the Court will then
18 reconvene to receive your verdicts. So at this time,
19 I'm going to go ahead and swear the bailiff in.

20 (Bailiff sworn.)

21 THE COURT: Thank you.

22 So you're going to go ahead and return
23 to your jury room. Take your notebooks with you. As
24 soon as you get there, you're going to go ahead and
25 Tiffany's going to bring in the exhibits and the

1 instructions and the verdict form.

2 And at that point, when you have all of
3 that information, you can begin your deliberations,
4 but don't do so until you've been told by -- by
5 Tiffany, okay? All right. Thank you.

6 (Jury retires to deliberate, 4:16 p.m.)

7 THE COURT: Okay. Exceptions from the
8 State?

9 MS. ATWOOD: No, Your Honor.

10 THE COURT: Mr. Taylor.

11 MR. TAYLOR: Only what was previously
12 mentioned on the voluntary acts, Judge.

13 THE COURT: Thank you, sir.

14 MR. TAYLOR: Thank you.

15 THE COURT: All right. And you're
16 giving us telephone numbers?

17 MS. ATWOOD: Yes.

18 THE COURT: Obviously, this has to get
19 done today.

20 MS. ATWOOD: Yeah.

21 THE COURT: So we'll be here. Hopefully
22 we'll be able to get it done today.

23 MS. ATWOOD: There is an exhibit still
24 on the stand.

25 MR. TAYLOR: And do I recall, they lock

1 the courthouse at 5:00, so we got to be inside here?

2 THE COURT: Yes. I think it -- it's
3 Friday night, so I think it is pretty much right at
4 5:00, but you can certainly check with the people
5 that guard and protect us.

6 MR. TAYLOR: I shan't risk it.

7 THE COURT: Okay. All right. Thank
8 you.

9 MS. ATWOOD: So if they're not done in
10 time?

11 THE COURT: Well, we'll stay if they're
12 not done by 5:00.

13 MS. ATWOOD: Okay.

14 THE COURT: We'll stay.

15 MS. ATWOOD: Okay. I just didn't know
16 'cause you said you were leaving for vacation, but
17 there's no issue with tonight?

18 THE COURT: No.

19 MS. ATWOOD: Okay.

20 (Recess taken, 4:17 p.m. - 7:25 p.m.)

21 THE COURT: All right. So we're back on
22 the record on State of Oregon versus Benjamin Barber.
23 And we have a verdict, so go ahead and get our
24 jurors.

25 (The following proceedings were held in

1 open court, the jury being present, 7:26 p.m.)

2 THE COURT: Okay. So I understand that
3 there's a verdict now.

4 And it looks like, Mr. Gordon, you're
5 the foreperson.

6 PRESIDING JUROR: Yes.

7 THE COURT: Okay. If you'll hand the
8 verdict to Ms. Morton. Thank you.

9 All right. And so at this time, having
10 not read the caption, "We, the jury, being first duly
11 empaneled and sworn in the above-entitled court and
12 cause, do find the defendant as follows:

13 On the charge of Unlawful Dissemination,
14 Pornhub, guilty; Unlawful Dissemination, RedTube
15 web -- website, guilty; Unlawful Dissemination,
16 Porn.com website, guilty; Unlawful Dissemination,
17 TNFFlix [sic] website, guilty; Unlawful
18 Dissemination, xHamster -- xHamster website, guilty;
19 Unlawful Dissemination, PornTV website, not guilty;
20 and Unlawful Dissemination, PornTube web -- website,
21 not guilty."

22 Was this, sir, a unanimous verdict?

23 PRESIDING JUROR: It was, ma'am.

24 THE COURT: All six of you?

25 PRESIDING JUROR: Yes.

1 THE COURT: Okay. Thank you very much.
2 I appreciate your assistance and at this time you are
3 all free to go. If you'll like to wait in the jury
4 room, I'll be happy to come in and speak with you.
5 But if you're ready to get out of here, just go ahead
6 and go.

7 A JUROR: Okay.

8 THE COURT: Okay?

9 PRESIDING JUROR: Thank you.

10 THE COURT: Thank you very much.

11 A JUROR: Thank you.

12 (Jury dismissed, 7:28 p.m.)

13 THE COURT: Okay. So, Mr. Taylor, did
14 you want to have brief conversation with your client
15 regarding whether or not he wants to proceed to
16 sentencing?

17 MR. TAYLOR: Judge, we actually already
18 discussed that. We would like to set over
19 sentencing. There's some merger issues that I'd like
20 to look into and be able to fully and accurately
21 argue to the Court.

22 THE COURT: Okay. Thank you. And when
23 are you thinking about doing that?

24 MR. TAYLOR: I believe we're sort of
25 open to Your Honor's schedule.

1 THE COURT: Okay.

2 MR. TAYLOR: I know you have things
3 going on. Should we discuss with the parties --

4 THE COURT: All right. Why don't you
5 talk about that --

6 MR. TAYLOR: -- and staff?

7 THE COURT: -- and then meet with your
8 victim? I'll be right back.

9 MS. ATWOOD: Sure.

10 (Recess taken, 7:28 p.m. - 7:30 p.m.)

11 THE COURT: December 1st?

12 MR. TAYLOR: I was chatting with
13 (indiscernible) I haven't chatted with Ms. Atwood
14 yet.

15 MS. ATWOOD: Sorry, Judge. We were
16 looking at December 1st.

17 MR. TAYLOR: So the judge is gone for
18 two weeks, so we're looking --

19 MS. ATWOOD: Yes. Well, I'm gone the
20 week of Thanksgiving as well, so --

21 MR. TAYLOR: All right. So we're
22 looking --

23 THE COURT: I'm not back 'til the 28th.

24 MS. ATWOOD: Okay.

25 MR. TAYLOR: So we're looking in this

1 week right here. I've got a trial those two days
2 (indiscernible).

3 MS. ATWOOD: Okay.

4 MR. TAYLOR: So I was hoping
5 December 1st, if that's -- if that works for other
6 people.

7 MS. ATWOOD: December 1st.

8 THE CLERK: What -- what time are we
9 thinking?

10 MR. TAYLOR: I think it's 8:30 or 1:15,
11 correct?

12 THE COURT: Probably 8:30 would be the
13 better time. Does 8:30 work for the victim? Okay.
14 All right. So we'll set over sentencing. And at
15 this time, I'm assuming that there's no request that
16 he be remanded?

17 MS. ATWOOD: Your Honor, I would request
18 that he be remanded, but I didn't know if it was
19 logistically possible in this --

20 THE COURT: Oh, and what is your request
21 for -- why -- why are you requesting remand?

22 MS. ATWOOD: Just because of the nature
23 of the charge and the victim's particular concerns
24 about his being out in public during the meantime.

25 THE COURT: Okay. He's been out of

1 custody since September?

2 MR. TAYLOR: That is correct, Judge.

3 THE COURT: Okay.

4 MR. TAYLOR: And no problems that I'm
5 aware of.

6 THE COURT: Okay. All right. At this
7 time, I'm not going to remand him into custody.

8 Mr. Barber, you understand that you are
9 still subject to your release agreement.

10 DEFENDANT BARBER: Understood.

11 THE COURT: It's still is in -- in
12 compliance, so anything that you were to do to
13 violate that between now and your sentencing would
14 have some very serious ramifications.

15 DEFENDANT BARBER: Understood.

16 THE COURT: You'd be remanded into
17 custody and there'd be other possible additional
18 charges, okay?

19 DEFENDANT BARBER: I understand.

20 THE COURT: Okay. All right. So we'll
21 set this over to the 1st of December at 8:30 for
22 sentencing. And are you intending of filing a
23 memorandum of law?

24 MR. TAYLOR: Judge, I'm going to be
25 honest with you. This is the first time I've really

1 needed to look into merger on a case.

2 THE COURT: Okay.

3 MR. TAYLOR: I -- I imagine I can just
4 orally make it, but if there is issues I file a very
5 brief memorandum with -- with well-advance notice --

6 THE COURT: Okay.

7 MR. TAYLOR: -- to all parties.

8 THE COURT: Okay. Thank you.

9 * * *

10 (Court adjourned, Volume 4, 11-10-16 at 7:32 p.m.)
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REPORTER'S CERTIFICATE

I, Katie Bradford, Court Reporter of the Circuit Court of the State of Oregon, Twentieth Judicial District, certify that I transcribed in stenotype from a digital audio recording the oral proceedings had upon the hearing of the above-entitled cause before the HONORABLE BETH L. ROBERTS, on **November 10, 2016**;

That I have subsequently caused my stenotype notes, so taken, to be reduced to computer-aided transcription under my direction; and that the foregoing transcript, **Volume 4 of 5, Pages 359 through 652**, both inclusive, constitutes a full, true and accurate record of said proceedings taken from a digital audio recording and so reported by me in stenotype as aforesaid.

Witness my hand and CSR Seal at
Portland, Oregon, this 12th day of January, 2017.

Katie Bradford, CSR 90-0148
Court Reporter
CSR Expires: 9-30-17
(503) 267-5112